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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF PUBLIC AFFAIRS
DOCKETING DIVISION
WASHINGTON, D.C.

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

Docket Nos. 50-352-62
50-353-64

NRC STAFF ANSWER IN OPPOSITION TO THE INMATES
OF THE STATE CORRECTIONAL INSTITUTE
AT GRATERFORD'S PETITION FOR REVIEW OF ALAB-845

Joseph Rutberg
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Benjamin H. Vogler
Senior Supervisory Trial Attorney

September 29, 1986

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I. INTRODUCTION

On September 11, 1986, the Inmates of the State Correctional Institute at Graterford (Inmates) filed a "Petition for Review" of ALAB-845. ^{1/} In ALAB-845, the Appeal Board decided the appeals from the Atomic Safety and Licensing Board's Fourth Partial Initial Decision ^{2/} and the Licensing Board's earlier rejection of certain of the Inmates' proffered contentions. ^{3/} All issues were decided in favor of the Licensee except for the rejection of the Inmates' proposed contention dealing with manpower mobilization at the State Correctional Institute at Graterford (SCIG). This contention was remanded to the Licensing Board for further consideration. ALAB-845 at 4. The In-

^{1/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-845, 24 NRC _____ (August 28, 1986). The Inmates had previously filed a Notice of Appeal on September 5, 1986, which was withdrawn upon the filing of the instant petition.

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LPB-85-25, 22 NRC 101 (1985).

^{3/} Licensing Board Order of June 12, 1985 (unpublished), reconsideration denied, Licensing Board Order of July 2, 1985 (unpublished).

mates are requesting Commission review of ALAB-845 in all respects except for the remanded contention and a contention dealing with medical services. For the reasons set forth below, the NRC staff opposes the Inmates' petition and urges that it be denied.

II. BACKGROUND

In ALAB-845, the Appeal Board dealt with the adequacy of the emergency plan for the SCIG. The Inmates had proposed a single contention with eight subparts alleging generally that there was a lack of reasonable assurance that the radiological emergency response plan (RERP) for the SCIG would protect them and the prison staff in the event of a nuclear emergency at Limerick. ALAB-845 at 2. The eight subparts were treated as separate contentions; two were accepted for litigation ^{4/} and the rest were denied. ^{5/}

The Appeal Board sustained the two Licensing Board decisions in all but one respect. ALAB-845 at 4. The decision reversed the Licensing Board's rejection of the Inmates' contention concerning manpower mobilization, admitted the contention, and remanded the matter to the the Licensing Board for further action. Id.

^{4/} One contention dealt with the training for civilian emergency workers (bus drivers) to be utilized in the event of an evacuation of the SCIG due to a nuclear emergency at Limerick and the other concerned the estimated time of evacuation of the SCIG.

^{5/} The rejected contentions dealt with manpower mobilization, input from the union representing the correctional officers, medical services to be provided in the event of an accident at Limerick, the simulated evacuation plan exercise for the SCIG, and the potential for panic in the event of the need to evacuate the SCIG.

The Appeal Board, in ALAB-845, first addressed the Licensing Board's treatment of the rejected contentions. It found that the Inmates had failed to provide a basis for their allegation that the SCIG correctional officers were not adequately informed about their duties during an emergency at Limerick and that further consultation with the union was therefore required. ALAB-845 at 16. The Appeal Board also affirmed the Licensing Board's decision rejecting the Inmates' contention dealing with the simulated evacuation because the proposed contention was lacking in basis and specificity. ALAB-845 at 23. Finally, with respect to the last rejected contention raised in this petition, the Appeal Board found that the Licensing Board was correct in rejecting the Inmates' contention raising the issue of panic in the event of an evacuation of the SCIG because it also lacked a specific basis. ALAB-845 at 27.

In dealing with the first of the two litigated contentions, whether training would be offered to civilian bus drivers participating in an evacuation, the Appeal Board affirmed the Licensing Board's determination that training would be offered and based upon the record would be accepted by the civilian bus drivers. ALAB-845 at 34. The Appeal Board also held that the efforts by the inmates to modify their contention on appeal to include the issue as to whether the training would be offered and received was being raised far too late in the proceeding. ALAB-845 at 31. The contention as admitted was limited to the issue of whether training would be offered. However, the Appeal Board found that the record and the decision were not silent on the question of whether the training would, in fact, be provided to the drivers and could not disagree with the Licensing Board's conclusion that training would be offered and accepted. ALAB-845 at 33-34.

The other litigated contention dealt with the evacuation time estimate (ETE) for the SCIG. The Appeal Board affirmed the Licensing Board and found that there was no merit to any of the arguments raised by the Inmates in connection with this aspect of their appeal. ^{6/} ALAB-845 at 36-43. Specifically, the Appeal Board concluded that the Inmates' argument that the fact that there had been three ETE's and that there were differences between them established that they were all unreliable was without merit. ALAB-845 at 37. The Board found that the ETE that was considered at the hearing included the various components of an evacuation that would be utilized at the SCIG. ALAB-845 at 38. Furthermore, the Appeal Board also addressed several other specific questions raised by the Inmates with respect to the ETE and determined that a review of the record did not support their arguments. ALAB-845 at 38-43.

Finally, the Appeal Board addressed the arguments raised by the Inmates concerning the fairness of the hearing. With respect to each issue raised by the Inmates, the Appeal Board concluded that the examples cited by the Inmates did not support their position. ALAB-845 at 50.

III. DISCUSSION

Although the Commission has the discretion to review any decision of its subordinate boards, a petition for Commission review of matters of law and policy "will not ordinarily be granted" unless important environmental, safe-

^{6/} It should be noted that although the Appeal Board affirmed the Licensing Board decision with respect to the ETE, it directed that, in connection with the remanded contention dealing with manpower mobilization, the Licensing Board should determine what effect, if any, the resolution of that issue had on the ETE. ALAB-845 at 41.

ty, procedural, common defense, antitrust or public policy issues are involved. (10 C.F.R. § 2.786(b)(4)(1). Similarly, petitions for review of matters of fact will not be granted unless the Appeal Board has resolved a factual issue necessary for a decision in a clearly erroneous manner contrary to the resolution of that same issue by the Licensing Board. 10 C.F.R. § 2.786(b)(4)(ii). The arguments made by the Inmates, in their petition, do not meet these standards and thus Commission review is not warranted.

The general thrust of the Inmates' position with respect to the litigated contentions is that they are unhappy that the Licensing Board and the Appeal Board gave greater weight to the testimony of the witnesses who appeared on behalf of the other parties than to the testimony of the witnesses who testified favorably to their position. While such a position is understandable, it does not establish that Commission review is warranted. As to the rejected contentions, the Inmates failed to set forth with sufficient specificity the basis for these contentions and have not established that the rejection of the contentions raises issues warranting Commission review.

A. Litigated Contentions

a. Bus Driver Training

In their brief, the Inmates appear to assert that a contention different from that which was litigated by the parties in this proceeding should have been considered. Petition at 6. The Inmates state that their concern lies with the use of civilian bus drivers and the reliability of such drivers to perform during an emergency. In their petition they request that the Commission give "some assurance that these individuals can be counted upon to participate in an evacuation in the event of an accident at the Limerick Generating Station." Petition at 2-3. However, that was not the issue they raised before Licensing Board or the Appeal Board. Below, the Inmates

requested the Appeal Board to find that "no reasonable assurances have been offered that civilians will be trained in radiological emergency responsiveness." Brief of the Intervenors Graterford Inmates, August 14, 1985, at 25. However, the proposed contention that was accepted by the Licensing Board and litigated, dealt with the concern that there was no reasonable assurance that training would be offered to civilian personnel. ^{7/} That contention was litigated before the Licensing Board and it was the decision dealing with that contention that the Appeal Board affirmed in ALAB-845. ^{8/} The record supports the conclusions reached by the Licensing and Appeal Boards on the issue of training being offered. In fact, Inmates do not question those decisions. Thus, the record is clear that the contention that was litigated is indeed the contention raised by the Inmates.

Nothing presented by the Inmates suggests that the issue of bus driver training warrants Commission review pursuant to 10 C.F.R. § 2.786.

b. Estimated Time of Evacuation

The Appeal Board affirmed the Licensing Board's determination that the Estimated Time of Evacuation prepared for the SCIG was reasonable and in compliance with the NRC's regulations and guidance. ALAB-845 at 36-43. The thrust of the Inmates' argument is that the Licensing Board and the Appeal Board relied upon the testimony of the wrong witnesses.

^{7/} Proposed Revised Contentions of the Graterford Inmates with Regard to the Radiological Response Plan, May 13, 1985, at 6.

^{8/} Inmates assertion that the Appeal Board has determined that an offer of training is sufficient to guarantee the reliability of the use of civilian personnel in the event of an evacuation is a mischaracterization of ALAB-845. See, Petition at 3. The Appeal Board was dealing with the accepted contention and its conclusion affirmed the decision of the Licensing Board that training would be offered. ALAB-845, at 35.

Petition at 6-9. However, Messrs. Lieberman, ^{9/} Zimmerman, Urbanik, Asher and Kinnard, all of whom testified in connection with the ETE, were knowledgeable and credible witnesses and the record fully supports their testimony and the conclusions reached by the Licensing Board and the Appeal Board based on this testimony.

The Inmates also assert that because three ETE's were developed for the SCIG and because they were developed, according to the Inmates, without coordination, the ETE was incorrect. Petition at 7. While it is true that during the course of this proceeding reference has been made to three different ETE's, only one was offered at the hearing. ALAB-845 at 38. In addition, the Inmates had the opportunity to examine the ETE, present testimony and cross examine the proponents of the accepted ETE. Nevertheless, they have failed to establish that it is not reasonable and appropriate. The record clearly supports the ETE that was reviewed at the hearing. The existence of earlier time estimates does not change this conclusion.

The Inmates have failed to establish that the issue they raise in connection with the ETE warrants Commission review pursuant to 10 C.F.R. § 2.786.

^{9/} It should be noted that Mr. Lieberman's testimony was very clear, to the point and was relied upon by the Licensing Board (e.g. LBP-85-25, Findings 48-53, 22 NRC at 115) and the Appeal Board (e.g. ALAB-845 at 40). Furthermore, the Inmates' statement that utilizing Mr. Lieberman's time frame for the arrival of busses at the SCIG would mean that they would be traveling at speeds in excess of 90 miles an hour is incorrect. Petition at 8. Such a conclusion assumes that all busses would be travelling from at least 190 miles. Such a conclusion is not supported by the record. Mr. Lieberman's prefiled testimony clearly indicates the range of distances that busses would travel is from 90 miles to 192 miles and that the travel time from the depot to the SCIG ranged from approximately two hours to

(FOOTNOTE CONTINUED ON NEXT PAGE)

c. Rejected Contentions

The Inmates request the Commission to review the denial by the Licensing Board and the subsequent affirmation by the Appeal Board of three contentions proposed by the Inmates. Petition at 9-10. None of the contentions raise issues warranting Commission review.

The first rejected contention deals with the Inmates' concern that there is no reasonable assurance that the correctional officers union (AFSCME) is aware of the Department of Corrections' concept of operations and its relationship to the total evacuation effort. ALAB-845 at 15. The AFSCME is not an emergency response organization under the terms of NUREG-0654, Section II, Criterion A. Since the AFSCME does not have an assigned emergency response function covered by law or regulation it is not required to be consulted in developing an emergency plan. The contention was rejected by the Licensing Board because the Inmates provided no basis for questioning the correctional officers' ability to perform their duties during an emergency at Limerick. The Appeal Board correctly affirmed this decision. ALAB-845 at 16.

The second contention deals with the simulated evacuation plan exercise for the SCIG. In this contention the Inmates argue that there is no reasonable assurance that the table top exercise of the evacuation plan conducted on March 7, 1985 was adequate in terms of 10 C.F.R. § 50.47(b)(14). Proposed Revised Contentions at 15. However, this regulation does not re-

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

four hours in good weather (average speed approx. 48 mph from 192 miles) and from two and a half hours to six hours for inclement weather (average speed approx. 32 mph from 192 miles). Lieberman, ff. Tr. 20,956, at 4.

quire that every activity identified in NUREG-0654, Criterion N, be included in every exercise. As the Appeal Board noted, Criterion N is sufficiently flexible to permit substantial variation in the scenarios played out during an emergency exercise. ALAB-845 at 24. The Inmates before the Appeal Board and in their petition to the Commission have not provided the necessary specificity as to why the exercise did not comply with 10 C.F.R. § 50.47(b)(14). Reference in their Petition (Petition, at 10) to the identification of specific personnel and the fact that there was activity at the Camp Hill office of the Department of Corrections do not come close to providing the type of specificity contemplated by our regulations. See, 10 C.F.R. § 2.714.

The last denied contention being raised in this matter asserts that there is no reasonable assurance that the Radiological Emergency Response Plan (RERP) for the SCIG will prevent a spontaneous evacuation of either the guards or inmates during an emergency at Limerick. Proposed Revised Contentions at 16. However, the Inmates provide no specific basis to support this contention nor do they attempt to explain why the RERP will not provide the very protection against panic that seems to concern the Inmates.

Accordingly, for the reasons set forth above, the rejected contentions being raised by the Inmates in their petition do not present the type of issues that warrants Commission review. 10 C.F.R. § 2.786(b).

d. Fairness of the Hearing

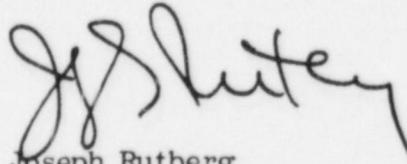
The Inmates also raise in their petition the question of a fair hearing. Petition at 11. They make no effort to explain why the Appeal Board was wrong in rejecting their arguments or why the Commission should now consider them. They do, however, raise before the Commission the question of the funding of intervenors, an argument that was not raised before the

Appeal Board. Petition at 12. In raising this issue, they acknowledge that the Commission does not provide funding for intervenors and, thus, there is no issue for the Commission to now consider.

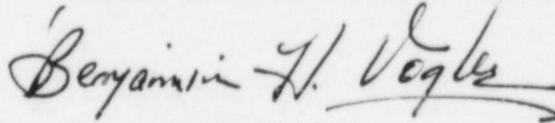
IV. CONCLUSION

For the reasons set forth above, the Inmates have failed to establish that the issues they raise before the Commission in connection with ALAB-845 involve important questions of law, fact or policy warranting Commission review. Accordingly, the Commission should deny the Inmates petition for review.

Respectfully submitted,



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Deputy Assistant General Counsel



Benjamin H. Vogler
Senior Supervisory Trial Attorney

Dated at Bethesda, Maryland
this 29th day of September, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

'86 SEP 30 A11:23

BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER IN OPPOSITION TO THE INMATES OF THE STATE CORRECTIONAL INSTITUTE AT GRATERFORD'S PETITION FOR REVIEW OF ALAB-845" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of September, 1986:

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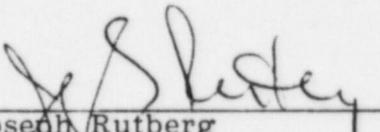
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