

June 29, 1985  
DOCKETED  
JUN 29 1985

R.L. ANTHONY/FOE ANSWER OPPOSING REQUEST FOR EXPEDITED REVIEW OF ALAB\*809 AND RELIEF,  
BY PHILA. ELEC. ON 6/20/85

'85 JUL -3 AIO:06

Anthony/FOE files this answer in opposition to NRC review of ALAB-809, as provided under 10 CFR 2.786 (b) (3), as follows in our rebuttal of PECO's request of 6/20.

1. ALAB correctly applied both 10 CFR 50.12 and 50.47 in its decision of 6/17/85, ALAB-809. (PECO Request, 6/20/85, p.1.) We disagree with PECO. Both sections apply.

2. (PECO p2.) NRC should refuse to grant any of the three alternative requests for relief. Both #1 and # 2 go against NRC's decision in CLI-85-11; # 3 should be refused because a new emergency exercise is essential. Graterford has not been included in a full scale exercise, nor has King of Prussia since traffic control was set up.

3. (PECO p.3.) AB did not err in waiting for hearings on the Graterford contentions because the adequacy of the emergency plans have not yet been determined, and (p.4) without a hearing LB is not in compliance with NRC's instructions in CLI 81-8.

4. (PECO p.5.) "Financial losses" are not to be considered under NRC, so do not apply. AB did not establish an "additional requirement" and, therefore, did not commit legal error. (PECO p.6.) AB did not assert "form over substance" when it correctly stated that there was no hearing record to review and consequently it was not in a position to evaluate deficiencies. NRC itself raised "important questions regarding the hearing rights of the inmates" in CLI-85-11. In addition the contentions of the inmates may further be expanded as indicated in A.R. Love's submission on behalf of the inmates, 6/24/85, to Docket and Service Section, "Exceptions to the Board's order of 6/12/85 "

5. (PECO p.8.) AB did not deny due process, as is evidenced by PECO's request here. Nor did AB usurp NRC's rule making prerogative. If there was denial of due process, it was in LB's failure to weigh the arguments of the parties, as pointed out by AB in ALAB 809, p. 13, n.13.

6. (PECO p.10) We do not agree that the inmates' rights could be assured without a hearing and that AB should have reviewed the briefs instead of remanding. We do not agree that PECO's hearing rights were violated, because PECO had the opportunity to file its brief and has taken advantage of the chance to request NRC review.

7. We assert that AB acted properly in remanding the inmates' contentions to LB, but the contentions LB accepted do not cover the extent of emergency protection needed for their safety or the extent of the deficiencies in the State's plans as shown in the inmates' "Exceptions to the Board's order of June 12, 1985 (See para.4 above)

8. We call NRC's attention to the points raised in our filings with LB and AB included as Attachments 1, 2, and 3: 3/15/85 "Motion in Opposition..", 3/27/85 "Additional Statement in Opposition", and 6/7/85 "Brief in Support of Our Appeal ". We believe the points above support NRC in a refusal of review and we ask this.

cc: AB Judges, LB Judges, Staff Counsel, Docketing,  
PECO, FEMA, PEMA, A. Love, Others on serv. list.

Respectfully submitted,

Robert L. Anthony

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BDR ADOCK 05000352  
PDR

U.S. NUCLEAR REGULATORY COMMISSION ... ATOMIC SAFETY AND LICENSING BOARD

Re: PHILA. ELEC. CO. Limerick Nuclear Gen.Sta.

DOCKETED 50-352, 353.

USNRC

March 15, 1985

ANTHONY/FOE MOTION IN OPPOSITION TO PECO'S MOTION FOR EXEMPTION FROM 10 CFR 50.47 PROVISIONS FOR EMERGENCY AND EVACUATION PLANNING FOR GRATERFORD PRISONERS AND STAFF.

OFFICE OF SECRETARY  
BRANCH

Intervenor Anthony/FOE registers our opposition to granting an exemption to PECO from the requirements of 10 CFR 50.47 and 42 U.S.C 2231 for planning for a radiological emergency at Limerick in relation to the prisoners and staff of the Penna. maximum security prison at Graterford, which is within the EPZ. We move the Board to deny this exemption and to set up a schedule of discovery and hearings to thoroughly explore emergency plans for Graterford and to relate these to the emergency plans for the other entities in the EPZ and adjacent to it.

1. The population concentration at the prison, an estimated average of 2,400, along with the potential threat to the community from accidental release of prisoners and victimizing of local residents makes a complete, workable, safe plan for Graterford one of the key links in protecting the public in the event of a radiological emergency at the Limerick plant.

2. There is such a close interrelation between safe emergency planning for the communities in, and adjacent to the EPZ, and Graterford that no operating license should be granted until both plans are approved and demonstrated as workable. Presently there is no assurance that any plan can be made workable. The Proposed Findings submitted by Ms. Z.G. Ferkin on 3/6/85 state (p.2.) "...the Commonwealth does not choose to certify at this time that the plans are adequate and capable of being implemented".

3. Furthermore, the NRC Staff's Proposed Findings, 3/7/85, place a condition on the current plans, that the testimony of FEMA witness, T. Urbanik, be implemented for traffic control points beyond the EPZ so that evacuation traffic can "continue to move". (NRC Findings Para. 6, 16, 37), Urbanik specifies "south and east of EPZ." Graterford evacuation would have to move south and east away from the plant. Safe planning for Graterford cannot be assured without the addition of these controls.

4. We adopt and endorse all the points in Graterford Inmates' Motion in Opposition to Applicant's Motion for Exemption, submitted by their counsel Angus R. Love. We include the Inmates' Motion in its entirety by reference here. We also endorse Major John Case, Field Director of the Pennsylvania Prison Society, as a qualified expert.

5. We add the points that follow as essential considerations which must be explored in discovery and a pre-hearing process, and resolved through testimony and findings in hearings before any operating license can be issued.

6. The timing of a Graterford evacuation is crucial. Would FEMA authorize

ATTACHMENT 1 (1)

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it at an early stage of a Limerick emergency in order to avoid conflict with evacuation traffic from EPZ? How many and what kind of prisoners would be assigned for early evacuation?

7. The impact of a partial, early evacuation would tie up staff and have the potential to cause a panic among prisoners.

8. A postponement of Graterford evacuation to an advanced stage of a Limerick emergency would pose aggravated problems such as the problematic change of staff shifts with guards having to make plans for their families and homes rather than reporting for work.

9. In addition the level of tension in the prison would rise rapidly with the first radio and TV news of a Limerick emergency and with the pressure on the staff to organize for a possible evacuation.

10. Any release of prisoners from locked cells under such tension could create panic conditions, even with additional personnel. The potential for injuries and deaths would be high, both inmates and guards.

11. Perhaps even more inevitable could be the potential for panic and riot if radiation should be carried by the wind in the direction of the prison and measures undertaken to measure the levels in the prison and to protect and treat the staff on a priority basis.

12. A decision not to evacuate prisoners and to rely on sheltering in the buildings could pose perhaps the greatest threat to the safety of prisoners and staff since the potential for riot and possibly a mass jail break would be high. Such an eventuality would bring great danger to the community.

13. In conclusion we state that the interrelation between emergency plans for the whole EPZ<sup>and Graterford</sup> is so complex that neither can be successful without full consideration of the mutual impacts. The implications for the public must be completely studied and resolved in a complete hearing process. The hazards involved in planning for Graterford must be considered through testimony and public participation. The public must understand the risks, and consent to the safest plan that can be devised.

14. We repeat our motion that the Board deny PECO's motion for an exemption in relation to Graterford prison and its inmates and staff, and that the Board give the required weight to these emergency plans by setting up a full discovery and hearing procedure. We further move that the Board postpone any decision on emergency plans for the whole EPZ until the hearing process on Graterford emergency planning has been completed and the two aspects have been coordinated into a workable whole.

cc: NRC LE Judges, Staff Counsel, Docketing Serv. Respectfully submitted,  
PECO, FEMA, FEMA, A. Love, others on Serv. List. Robert L. Anthony  
Box 186 Moylan, Pa. 19065

ATTACHMENT 1 (2)

Re: PHILA.ELEC. CO. Limerick Nuclear Gen. Sta. DOCKET # 50- 352, 353

ADDITIONAL STATEMENT IN OPPOSITION TO PECO's MOTION TO EXEMPT GRATERFORD PRISON FROM REQUIREMENTS OF 10CFR 50.47 on EMERGENCY PLANNING, BY R. ANTHONY/FOE.

March 27, 1985

On 3/15/85 Anthony/FOE filed a motion in opposition to PECO's motion of 2/7/85 to exempt the Graterford Prison inmates and staff from the requirements of 10 CFR 50.47 for evacuation and emergency planning at the Limerick plant. We are restating herewith our motion in opposition to granting this exemption with the providing of additional arguments as follows:

1. Until The Graterford Prison Inmates are allowed complete access to the the total evacuation and emergency plans prepared for them by FEMA, and have been free to file contentions on these plans and have them accepted and considered in inevidentiary hearings, there can be no assurance that the total plans for the EPZ can be successfully implemented.

2. The NRC Staff presented a number of reservations about PECO's motion in its Response dated 3/18/85, concluding with (p.12.), " ...it would be inappropriate at this time for the Licensing Board to consider the Applicant's motion for exemption..."

3. We give due weight, and believe ASLB should also, to the Staff's (NRC Resp.) (p.8.) that FEMA has been assigned "lead responsibility" by Presidential Order, and (p.9.) NRC <sup>must</sup> base its findings on FEMA findings, and FEMA has not reviewed or evaluated the Graterford plans.

4. It seems inconceivable that ASLB would consider circumventing the Presidential Order by cutting FEMA out of the review process by granting PECO's motion.

5. The exemption would discredit the whole process to protect the public via workable emergency plans since the plant could operate up to full power without the Graterford plan, upon which the success of EPZ evacuation depends because of the routing of evacuation traffic east and south and north, <sup>intersecting prison traffic.</sup>

6. Up to now it appears that FEMA has not taken part in any of ASLB's pre-hearings. FEMA was not listed in the Harrisburg conferences of 2/27/85 or 3/22/85. FEMA is not included in ASLB's Protective Order of 3/20/85. This raises a serious question about FEMA's participation and the ability of NRC to make a decision on the workability of the Graterford plan and the whole EPZ plan. Unless FEMA is included, the Graterford plan cannot be valid, nor the public protected.

7. We agree with the Staff that NUREG-0396 takes into account core melt accidents and still requires " offsite plans for protective measures out to about 10 miles " (NRC Resp. p 10). We agree with the Staff that PECO has no basis for arguing that emergency planning for the Inmates is not needed due to low probability. (p.10,11,12). We agree that it would be inappropriate "for the Licensing Board to consider the use of the exemption authority under 10 CFR 50.12." (p. 9 )

ATTACHMENT 2 (1)

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8. We wish to call the Board's attention to the Commonwealth's rebuttal of PECO's claim that prison evacuation planning is not an "absolute requirement". (Commonwealth Response to Applicant's Motion, 3/15/85 (PEMA Resp.) p. 7.) We agree with PEMA that Waterford, 16 NRC 1550, 1566, cited by PECO, contrary to PECO's position, "expressly conditioned issuance of the operating license on development of prison evacuation plans." (PEMA Resp. p.8.)

9. We agree with PEMA that formulation of workable plans for Graterford and a carrying through of a complete hearing process on Inmate contentions will not result in "significant delay" to the operation of the Limerick plant (PEMA Resp. p. 3.) And we agree that "exigent circumstances" do not exist in this case. (p.2)

10. We endorse PEMA's position that it "does not believe exigent circumstances are present in this case and thus does not support Applicant's Motion for an exemption.." ( p.8.)

11. We call the Board's attention to an application to the Delaware River Basin Commission by PECO dated 3/15/85, forwarded to the members of the Board on 3/19/85 by Mark J. Wetterhahn. We believe this application for supplemental cooling water for the Limerick plant proves that the controlling factor in the rise of power output is not an emergency plan for the Graterford Inmates but the availability of cooling water (See letter, E.G. Bauer to Susan Weisman, DRBC 3/15/85, p. 1.) PECO's application to DRBC includes an affidavit by Vincent S. Boyer, 3/15/85. This affidavit invalidates V.S. Boyer's affidavit of 3/14/85 submitted to the Board by M.J. Wetterhahn 3/19/85 as an attachment to "Applicant's Motion for Exemption.." (re. Graterford). In the 3/15 affidavit Mr. Boyer says, "the Plant will be ready to proceed to power levels greater than allowed under our existing license by the end of March, 1985 (para. 2.) and (para. 3.)" In order to proceed with the power ascension program for Unit 1 after the issuance of a full power license by the NRC, it is necessary to have in place a supplemental cooling water supply".

12. It is apparent from Mr. Boyer's 3/15/85 affidavit that the restriction on operating the reactor is not <sup>the absence of</sup> a Graterford plan but the lack of cooling water.

13. The application to DRBC for cooling water from the Schuylkill River is a PECO move which prompts the question: why was the elaborate and costly plan to pump water from Pt. Pleasant ever undertaken by PECO and approved by DRBC? We are certain that DRBC will not back down from its protective restriction on the use of Schuylkill water for supplemental cooling, even temporarily. The process involved with the application will take weeks and probably months. In that time there will be ample opportunity to arrive at emergency plans for Graterford. Hence no exemption should be granted by ASLB.

14. PECO's proposal to substitute monitoring of dissolved oxygen levels in place of the 59°F temperature constraint in the <sup>it</sup> Schuylkill River (3/15/85 PECO application to DRBC) is environmentally unsound; will bring controversy and almost certain denial. The process could be protracted. This will hold up power ascension.

A further restriction on Schuylkill water could come from the current rain shortage.

Co: NRC Staff, Docketing Serv. PECO, PEMA, FEMA,  
A. Love, others on Serv. List.

Respectfully submitted,

ATTACHMENT 2 (2) Robert L. Anthony Box 186  
Moylan 19046

RE: PHILA ELEC.CO. Limerick Gen.Sta. Units 1 & 2 . DOCKET No.: 50-352,353 .

ANTHONY/FOE BRIEF IN SUPPORT OF OUR APPEAL OF 6/2/85 FROM LB'S ORDER IMPE-  
MENTING ITS GRANT OF EXEMPTION FROM 10CFR 50.47 (a) (b) AND AUTHORIZING LICENSE.

June 7, 1985

We are in receipt of the Board's Order of 6/3/85 setting the briefing sched-  
ule for the above appeals. We are complying with this curtailed timing although  
it imposes hardships on us not to be subject to the statutory allowance of 30 days.  
Hence our brief will be limited for the most part to material already submitted.  
We believe, however, that the Board will find <sup>here</sup> the weight required to convince the  
Board to reverse LB's decision granting the exemption from 10 CFR 50.47 (a) (b),  
and its authorization of the issuance of a full power license.

1. We incorporate here all of our brief submitted to the Board, dated 6/6/85,  
on LB's Partial Initial Decision on Offsite Emergency Planning for Limerick.  
This brief shows that the Limerick EPZ was set up without the participation of  
FEMA, required under 44 CFR 350.7 (b) , PECO's evacuation time study estimates  
and the use of evacuation routes were thrown into question by the testimony of the  
NRC witness, and new plans will have to be drawn up to include Valley Forge Park/  
King of Prussia and Marsh Creek Park/Exton areas in the EPZ, and the boundaries of  
the EPZ will have to be reconsidered, and revised evacuation plans for the whole  
EPZ restudied and submitted to the review and hearing process. Since the evacu-  
ation plans for the Graterford prisoners is dependent on the configuration of the  
EPZ and the plans for the whole EPZ, these plans will have to be re-worked in  
relation to revised evacuation plans for the total EPZ. We believe that this means  
valid plans for evacuation of the EPZ no longer are in hand <sup>and</sup> the process for EPZ  
and Graterford evacuation will have to be reconstituted. Hence a plan for Grater-  
ford will be in abeyance and an exemption cannot be granted nor authorization  
to issue a license granted, as we trust the Board will find.

2. Furthermore we incorporate here our motion of 3/15/85 in opposition to  
PECO's motion for an exemption for Graterford and we stress especially the danger  
to the EPZ community and the greater community from a panic at the prison and  
the escape of dangerous prisoners at a time of high tension during an evacuation  
of the EPZ.

3. The "table Top" exercise for Graterford did not satisfy 44 CFR 350.2 (j)  
in respect to the number of personnel trained and involved, i.e. "emergency person-  
nel are engaged in sufficient numbers to verify the capability to respond..."

4. Since there is no record of FEMA participation in the Graterford pre-hearing  
process or the Protective Order of 3/20/85, LB and FEMA did not comply with the  
requirements of 44 CFR 350.3 (d) "Cooperative effort with State and local, etc.,  
and 44 CFR 351.20 (a) through (l) "establish policy and provide leadership," etc.

cc: AB Judges, ASLB, Staff Counsel, Docketing,  
PECO, FEMA, FEMA, A. Love, Others on Serv. List.

Respectfully submitted,  
Box 186 Moylan, Pa. 19065

Robert L. Anthony

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