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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Station, :
Units 1 and 2) : NOS. 50-352 and 50-3530h

GRATERFORD INMATES' RESPONSE TO APPLICANT'S MOTION FOR AN EXEMPTION
FROM THE REQUIREMENTS OF 10 C.F.R. 50.47(a) and (b) AS THEY RELATE TO
THE CONTENTIONS OF THE GRATERFORD PRISONERS

I. INTRODUCTION

The Graterford inmates, through their attorney, Angus R. Love, hereby oppose the renewed motion of the applicant requesting an exemption from the requirements of 10 C.F.R. 50.47(a) and (b) to permit operation of the Limerick Generating Station at power levels greater than 5% of rated power prior to the completion of litigation of the contentions regarding the adequacy of emergency planning and preparedness for the State Correctional Institute at Graterford. The reasons for the inmates' opposition to the exemption request are as follows. The inmates' rights as intervenors in this licensing process, their rights to file contentions, and their right to litigate said contentions in their entirety pursuant to 10 C.F.R. 50.47 have not yet been granted. The applicant's request for an exemption is not based upon precedent nor does it conform with the requirements for the granting of such an exemption as mandated by 10 C.F.R. 50.12 (a) and 10 C.F.R. 50.47(c)1. Finally, the inmates contend that the

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applicant's frequent utilization of exemptions in this and other issues should not be allowed to correct their failure to plan appropriately for the resolution of this and other inevitable issues which must be faced prior to achieving full power status.

II. LEGAL ARGUMENT

A. The inmates have not received their rights as intervenors pursuant to 10 C.F.R. 50.47 emergency planning requirements.

Intervenors entered the licensing process in 1981 with the filing of nineteen affidavits of Graterford inmates expressing a concern in these proceedings and wishing to provide input. In December of 1984, the inmates received an Emergency Radiological Response Plan for the State Correctional Institute at Graterford in the event of a nuclear emergency at the Limerick Generating Station. Said plan was 25 pages in length and heavily censored. The inmates requested of the Board an order permitting further disclosure. The Board refused and denied the inmates' motion for a stay forcing them to file contentions based upon Plan 1. The inmates were successful in their appeal as the Commonwealth of Pennsylvania permitted the inmates' attorney and their expert, John Case, to review a second more comprehensive plan under the protective order of the court. Said plan was 86 pages in length and satisfied the inmates' concerns with respect to the disclosure issue. The inmates then sought to revise their contentions based upon the new information available in Plan 2 and were once again rejected out of hand by the Licensing Board. The inmates were once again successful on appeal, as the Atomic Safety and Licensing Appeal Board reinstated the inmates as a party on their May 1st ruling and

permitted revised contentions to be filed by May 15, 1985. Prior to the completion of the mandate of the Appeals Court, the Licensing Board granted the applicant's request for an exemption from the Graterford issue, allowing them to achieve full power status. The inmates once again appealed this decision and once again the Appeal Board vacated the Licensing Board's earlier decision in its decision of June 12, 1985. The inmates also note that the Appeal Board decision was based in part upon a decision of the Nuclear Regulatory Commission. (See Memorandum and Order CLI-85-11, June 11, 1985 at 4:28 p.m.) The Licensing Board did admit two of the eight contentions that were submitted to them after they were ordered to receive them by the Appeal Board. Said decision was issued on June 12, 1985 and allowed for the contentions regarding bus driver training and the methodology of the estimated time of evacuation to be admitted. The inmates filed exceptions to the denial of five of the six contentions on June 24, 1985. Although this history has been recited many times by all concerned parties, the inmates believe it is important to stress the many obstacles that have been placed in their path in attempting to pursue their lawful rights as intervenors under 10 C.F.R. 50.47.

The inmates also draw the Board's attention to the ruling of the Atomic Safety and Licensing Appeal Board ALAB-806 May 1, 1985, which states: "...Any delay likely to result at this stage cannot be laid at the feet of the Graterford prisoners." at page 16. Unfortunately, the Licensing Board views the issue in a different light. As evidence of this

fact, the inmates draw the Board's attention to a previous order granting the initial request by the applicant for an exemption from this issue when they stated on page 3, "Unless the inmates are using judicial process to an end to which the Board is not privy...". This statement, in addition to an additional statement on page 5, which states, "The deficiencies in the plan are not significant" further evidence the inmates' contention that the Licensing Board has not given the inmates their legal rights as contemplated by the emergency planning requirements promulgated by the United States Congress via Public Law 83-703, August 8, 1980. Unfortunately, the Licensing Board has shown a greater concern for its ability to get the applicant off the "horns of others dilemma". (See Order Granting Applicant's Motion for Exemption from Requirement of 10 C.F.R. 50.47(a) and (b) for a Period of Time any Potential Contentions of Remaining Parties are Considered by the Board. ASLEP NO. 81-465-07 OL May 9, 1985.) The granting of an exemption at this stage of the proceeding prior to the litigation of the two admitted contentions and the inmates' exceptions to five of the six denied contentions would be premature in light of the seriousness of the issue, the unique nature of the contention, and the potential danger due to the population to be evacuated. Unfortunately, the Licensing Board has made every attempt to evade the inmates' input in this matter rather than confronting this important issue which presents a challenge to emergency planners and should be accorded all rights given the intervenors under emergency planning guidelines. It is the applicant's burden of proof with respect to emergency planning, not the inmates.

B. The applicant has failed to meet the necessary requirements for the granting of an exemption under either 10 C.F.R. 50.47(c)2 and/or 10 C.F.R. 50.12(a).

Initially, the inmates point out that the applicant's brief in support of its motion for an exemption contains no precedent of a similar nature upon which such an exemption could be granted. The inmates point out a review of past caselaw regarding the issuance of exemptions suggests "The use of exemption authority under 10 C.F.R. 50.12 is extraordinary and is based upon a finding of exceptional circumstances, considering the equities of the situation." Long Island Light Company, (Shoreham Nuclear Power Station, Unit 1) CLI-84-3, 19 NRC 1154 at 1155, (1984). As further evidence of the lack of an appropriate precedent for the granting of an exemption, the inmates point out that the two prominently mentioned cases in the applicant's brief, Long Island Lighting Company, (Shoreham Nuclear Power Station, Unit 1) CLI-83-13, 17 NRC 741, 1983, and Southern California Edison Company, (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-680, 16 NRC 127 (1982) are easily distinguishable in that neither of these cases requests an exemption from the emergency planning requirements mandated by 10 C.F.R. 50.47. The Long Island case involves the applicant's substitution of an emergency response plan in the absence of a county plan and deals with the issue of whether the substitute plan should be considered by the Board in its emergency planning mandate. The San Onofre case was a request by intervenors for a stay pending an appeal of the Licensing Board's grant of a full power license. This case did not in any way represent a short cut to the compliance with the emergency planning

requirements of 10 C.F.R. 50.47 as is contemplated in this applicant's exemption request.

The inmates are in agreement with the Appeal Board that the exemption cannot and should not be granted on the basis of the three factors enunciated in 10 C.F.R. 50.47(c)1. The regulations on their face indicate that 10 C.F.R. 50.12(a) is the applicable standard of review for an exemption request. Therefore, the inmates contend that the applicant must satisfy the requirements of 50.12(a) in order to be successful in their exemption request. The appropriate standard of Section 50.12(a) reads as follows: "The commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." With respect to the first component of this test, "authorized by law", the inmates are in agreement with the applicant that they do have the authority to grant such exemptions given compliance with all of the following requirements. The second consideration states that an exemption should not be issued if it will endanger life or property or the common defense and security. The applicant relies upon probability risk assessments in forming its conclusion that the granting of an exemption would not endanger life, property or the common defense and security. The inmates incorporate by reference their response to similar contentions in the applicant's initial request. The inmates specifically refer to their filing of March 13, 1985, Subsection B, page 9, in which they review the probability risk assessment made by the applicant. In essence, the inmates

contend that the applicant's studies are deficient in that they conveniently omit the worst possible accident scenario, such as a core melt down. Emergency planning regulations call for a review of all types of accidents and do not warrant the exclusion of the worst possible scenarios. (See NUREG 0654.)

With respect to the third criteria, which states that a grant of the requested exemption is in the public interest, the inmates point out the following. At numerous times during this proceeding, the applicant has suggested that its financial wherewithal should be an important consideration in the speeding up of the licensing process. The inmates contend that the old adage of haste makes waste is directly applicable to the current issues before the Board. The applicant has frequently contended in its pleadings and press releases that the licensing delays are costing its customers 49 million dollars per month. (See applicant's Motion, page 26.) The inmates in the past have contended that such matters are not in the proper scope of the licensing process, however, have been overruled by the decisions of the Board on this issue. Thus, the inmates at this point will suggest a countervailing economic argument to show that the granting of a full power license to the applicant is not in the public interest. The inmates draw the Board's attention to the matter currently pending before the United States District Court for the Eastern District of Pennsylvania, which is captioned Hampton C. Randolph, Sr. and James E. and Lulu K. Gaut, suing individually and on behalf and for the benefit of all others similarly situated, and derivately in the right and for the benefit of the Philadelphia Electric Company, Plaintiffs vs. James L. Everett, John H. Austin, Jr., Vincent S. Boyer, William T. Coleman, Jr., M. Walter D'Alessio, William S. Fisher,

Robert F. Gilkeson, William H. Hagarty, Robert D. Harrison, Paul R. Kaiser,
Joseph C. Ladd, Edithe J. Levit, Joseph J. McLaughlin, Richard G. Gilmore,
Gustave G. Amsterdam, Defendants, and Philadelphia Electric Company, Nominal
Defendant, Docket No. Civil Action 85-1878. Said suit represents an action on
behalf of the common shareholders of the Philadelphia Electric Company on behalf
of themselves and all others similarly situated against the officers of the
Philadelphia Electric Company. In paragraph 15 of the plaintiffs' complaint,
under the topic of Operative Facts, the plaintiffs allege:

"PECO has been constructing a two-unit nuclear power facility at a site in Limerick Township, Montgomery County, Pennsylvania (the Limerick complex or facility), since May 1968, when it announced its intention to undertake the project at an estimated completion price of \$289 million dollars. The Limerick complex is designed to consist of two independent nuclear reactors (Unit 1 and Unit 2) which are to share common facilities and equipment. Each nuclear reactor is designed to drive a 1,055 megawatt electrical generating unit. Construction of Unit 1 has been completed. PECO estimates Unit 2 is 31% complete based on the expected number of man-hours necessary to complete construction. On March 25, 1985, PECO announced that it expects the entire Limerick complex to cost \$7.23 billion if it is eventually completed."

The current cost estimates represent a 2,218% total projected cost as multiple of 1968 cost estimates. The suit goes on to allege in paragraph 23:

"The failures of PECO's management that were observed by the PUC in 1982 have resulted in corporate waste and have continued unabated to the present. The gross mismanagement of defendants is evidenced by an insistence to construct and complete the Limerick complex despite knowledge that:

- (a) there has never been an assured and adequate supply and source of water to operate either or both of the units comprising the Limerick complex;
- (b) since 1974 PECO has had or is projected to have excess generating capacity from existing facilities (excluding Limerick) and the excess capacity

is and will be of such a magnitude as to jeopardize the ability of PECO to recover its Limerick construction costs in PUC approved rate increases;

- (c) even in the unlikely event that rate increases are permitted, in whole or in part, the direct ramifications of such increases will be to reduce demand (and, as a result, reduce revenues) and to drive large industrial users to alternate sources of power;
- (d) the Limerick construction costs have been funded through bond and stock offerings which have had the effect of significantly reducing stockholder equity and diluting the book value of the Company's stock with little or no expectation of any reversal of that trend based on facts known to defendants; and
- (e) continued construction of the Limerick facility has significant adverse effects on the financial condition of the Company and exposes the Company to risk of irrevocable damage and insolvency."

It would appear from the preceding statements that it is the shareholders and not PECO's customers that are losing substantial amounts of money due to the delays. And it is the shareholders' position as evidenced by the aforementioned complaint that it is mismanagement and corporate waste that are the real reasons for the delays and excessive costs which have been incurred to date. In light of these comments, it is the inmates' contention that it is not in the public interests to grant an exemption from the requirements of 10 C.F.R. 50.47. For these reasons, the inmates contend that the applicant has failed to meet its burden of satisfying each and every requirement of 10 C.F.R. 50.12(a).

C. The inmates contend that a granting of an exemption solely upon the requirements of 10 C.F.R. 50.47(c)1 is inappropriate.

The inmates hereby incorporate by reference the arguments presented in their initial motion in opposition to the applicant's initial motion for an exemption with respect to the Graterford issue which was filed with the Docketing Service on March 13, 1985, and the inmates' exceptions to the Board's order granting the applicant's motion for exemption from the requirements of 10 C.F.R. 50.47(a) and (b) which was filed with the Docketing Service on May 17, 1985 and finally, the inmates' Notice of Appeal of the Board's granting the applicant's motion for exemption with respect to this issue, which was filed with the Docketing Service on May 17, 1985. In essence, these arguments suggests that the use of such a standard in and of itself is inappropriate, especially in light of the premature nature of such a request, prior to the completion of the inmates' lawful rights as intervenors to file and litigate the contentions that they have raised.

The inmates also point out that the applicant's heavy reliance upon the FEMA report of the table top exercise of March 7, 1985 and its supposed correction of a Category A deficiency which had been noted in a prior exercise does not provide an answer to this issue. In support of this statement the inmates draw the Board's attention to the case of Southern California Edison Company et al (San Onofre Nuclear Generating Station, Units 1 and 2) ALAB-690, 16 NRC 127 at 349 (1982), which states that findings by FEMA with respect to emergency planning exercises, that such plans are adequate and capable of being implemented is entitled to a rebuttable presumption in NRC licensing

proceedings. Thus, the inmates have yet to have the opportunity to rebut this presumption and therefore believe that this basis is premature and inadequate. The inmates also point out that new regulations were recently promulgated with respect to this issue on May 8, 1985 in the Federal Register, Volume 50, No. 89. These regulations were altered pursuant to the Union of Concerned Scientists vs. NRC, 735 F.2d 1437 (D.C. Circuit 1984). This case vacated a prior NRC 1982 amendment. See 47 Federal Register 30232, July 13, 1982. This case further states that emergency planning and preparation regulations are now a material issue to be considered by the Licensing Board during the licensing process. For these reasons the inmates contend that the applicant's reliance upon the standard set forth in 10 C.F.R. 50.47(c)2 are not appropriate in this instance for the granting of such an exemption.

III. CONCLUSION

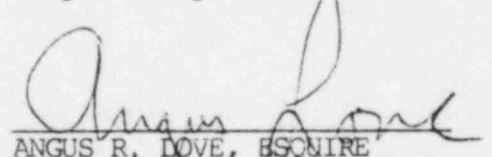
It has often been said that the best laid plans of mice and men often go astray. When dealing with issues of the magnitude of nuclear power plants juxtapositioned to maximum security prisons, the old adage must be given serious thought. The inmates contend that to deny their rights to litigate their admitted contentions and to pursue appeal on those contentions that were denied must be given to them prior to the issuance of a full power license for the Limerick Generating facility. The history of the inmates' contention which includes a three year delay on the part of the Commonwealth prior to the development of the requisite Emergency Radiological Response Plan and then the three successful appeals pursued by the inmates through the administrative process, suggests that their rights are only beginning to be considered. A

grant of an exemption at this time would merely reinforce the inmates' suspicion that this issue is being evaded rather than litigated. The mandate that the United States Congress gave the NRC when it promulgated the emergency planning regulations in 1980 has yet to be carried out with respect to the Graterford issue. The inmates cite the recent decision of the Nuclear Regulatory Commission entitled Memorandum and Order, docketed June 11, 1985, at which time they state: "The Commission finds that important questions regarding the hearing rights of the inmates of the State Correctional Institute at Graterford, Pennsylvania have not yet been resolved." See page 2. These hearings rights are still in limbo as they are currently scheduled to begin on July 15, 1985 with respect to the two of the eight admitted contentions. The inmates further point out that five rejected contentions are currently subject of a request for reconsideration. Thus, this issue is clearly in the midst of litigation and is premature for the granting of said exemption.

The inmates also point out that this resurrection of the exemption request is the third such exemption that the applicant has requested in the past few months. In addition to this exemption request, they have also requested and been rejected by the Delaware River Water Basin for an exemption from withdrawal of water from the Schuylkill River when the temperature reaches a certain level. The applicant has also recently requested another exemption from their requirement to conduct full participation exercise within one year before the issuance of a full power operator's license. These three exemption requests when read in the light of the recently filed class action lawsuit on behalf of the shareholders of stock in the Philadelphia Electric Company versus the

corporate officials of the Philadelphia Electric Company, indicate that the applicant is merely attempting to make up for past errors in judgment through the use of the exemption procedure. As has been previously noted, the power to grant exemptions is extraordinary and should not be utilized in such a fashion.

Respectfully submitted,



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Units 1 and 2) : NOS. 50-352 and 50-353

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 Graterford Inmates' Response to Applicant's Motion for an Exemption from the requirements of 10 C.F.R. 50.47(a) and (b) as they Relate to the Two Contentions Admitted on Behalf of the Graterford Prisoners, was mailed to the following list by first class mail, postage prepaid on July 1, 1985.

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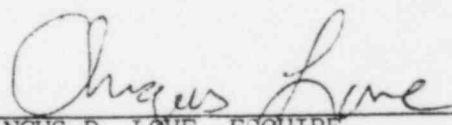
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