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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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Docket Nos. 50-352^{OL}
50-353

OFFICE OF SECRETARY
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NRC STAFF RESPONSE TO APPLICANT'S
RENEWED MOTION FOR AN EXEMPTION FROM
THE REQUIREMENTS OF 10 C.F.R. § 50.47(a) AND (b)

I. INTRODUCTION

On June 20, 1985, Philadelphia Electric Company filed a renewed motion pursuant to 10 C.F.R. §§ 50.12(a) and 50.47(c)(1) for 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 the litigation of contentions regarding the adequacy of emergency planning and preparedness for the State Correctional Institution at Graterford (SCIG). For the reasons discussed below, the Staff submits that, while the Licensing Board could properly consider the present exemption request at this time, the better course would be for the Board to defer consideration of that request until testimony has been filed by the parties to this proceeding addressing Intervenor's two pending emergency planning contentions. Upon submission of such testimony, the Licensing Board will have a more complete

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factual record upon which to consider the exemption request than currently exists.

II. BACKGROUND

On February 7, 1985, Applicant filed a "Motion for Exemption From the Requirements of 10 C.F.R. § 50.47(a) and (b) As They Relate To the Necessity of Atomic Safety and Licensing Board Consideration of Evacuation Provisions of the Emergency Plans for the State Correctional Institution of Graterford." On May 9, 1985, the Licensing Board granted the motion but did not implement its Order, pending receipt of comments from the parties. On May 24, 1985, after reviewing the comments of the parties, it issued a "Board's Order Implementing Its Grant of Applicant's Motion for Exemption from Requirements of 10 C.F.R. § 50.47(a) and (b) for a Period of Time Contentions of Graterford Inmates Are Considered By the Board". Intervenor Graterford Inmates appealed the May 24th Order and the Appeal Board in ALAB-809 vacated the two orders of the Licensing Board. ^{1/} In ALAB-809, the Appeal Board held that the Licensing Board had erred in failing to evaluate Applicant's exemption request against the standards of 10 C.F.R. § 50.12(a) as well as those of § 50.47(c)(1). The Appeal Board also held that the Licensing Board had acted improperly in granting the motion prior to determining whether there were any contentions proposed by the Graterford inmates that were admissible. The Appeal Board further indicated that now that the Licensing Board has

^{1/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-809, 21 NRC ____ (June 17, 1985).

ruled on the revised contentions and determined that two parts of the proposed contention are admissible, it can properly consider the Applicant's exemption request in the context of the two litigable issues.

III. DISCUSSION

A. The Staff's bases for its opposition to the motion of February 7

The NRC staff opposed the Applicant's motion of February 7, 1985 on two bases: (1) that the motion was premature in that no contentions of the Graterford Inmates had been admitted for litigation at the time the Applicant filed the motion ^{2/} and (2) that the motion was premature in that there was no indication in the record that FEMA had either reviewed or evaluated the plan for the Graterford Prison.

The Staff's first objection is now no longer applicable as two contentions advanced by the Graterford Inmates have been admitted for litigation and the Licensing Board now has a specific basis against which to consider the criteria of §§ 50.12(a) and 50.47(c)(1). ^{3/}

As regards the Staff's second objection, that the motion was premature because FEMA had not reviewed or evaluated the SCIG plan, the Staff noted in its "Additional Views", filed April 1, 1985, that this objection was resolved by FEMA's observation and evaluation of the March 7, 1985 emergency

^{2/} As the Appeal Board stated in ALAB-809, the Graterford Inmates' contentions were not yet admitted at the time the Licensing Board granted the motion. The motion was granted in an order of May 24, 1985 and the contentions were admitted in an order of June 12, 1985.

^{3/} As indicated above, it is noted in ALAB-809 that the Licensing Board can now properly consider the Applicant's exemption request in the context of the two litigable issues. ALAB-809, slip op. at 15-16.

planning remedial exercise. The Staff also expressed in its "Additional Views" the opinion that the Licensing Board would be in a position to consider the Applicant's exemption request if and when the Board determined that the Graterford Inmates had proffered an admissible contention. This Board, by its Order of June 12, 1985 admitted two contentions proffered by the Intervenor, one relating to the adequacy of the training of bus and ambulance drivers, and the other concerning evacuation time estimates.

B. 10 C.F.R. § 50.47(c)(1)'s disjunctive criteria for exemptions from the specific requirements of 10 C.F.R. § 50.47(b)

In ALAB-809, the Appeal Board stated that it was proper for the Licensing Board to apply the criteria of 10 C.F.R. § 50.47(c)(1) in order to determine whether the Applicant has met the standards for an exemption from the specific requirements of 10 C.F.R. § 50.47(b)(1)-(16). Id. slip op. at 9. Section 50.47(c)(1) provides:

Failure to meet the applicable [emergency planning] standards set forth in paragraph (b) of this section may result in the Commission declining to issue an operating license; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

Thus, the three disjunctive factors to be considered under this regulation are (1) the significance of the plan's deficiencies, (2) the adequacy and promptness of interim compensating actions and (3) the existence of other compelling reasons for plant operation.

1. As noted above, the Licensing Board has admitted two parts of the bases of the Inmates' contentions for litigation. The first part relates to the adequacy of the training for civilian bus and ambulance

drivers. In this regard the Staff notes that the Applicant has already agreed to provide the same training to civilian bus providers for Graterford as that given to the other bus providers in the EPZ. Applicant's Answer to Proposed Emergency Planning Contentions of the Graterford Prisoners, at 4, April 4, 1985.

In addition, both the Commonwealth of Pennsylvania and the Applicant have independently agreed to provide any additional training found to be required by the Licensing Board. Applicant's Answer to Proposed Emergency Planning Contentions, April 4, 1985; Response of the Commonwealth of Pennsylvania, Department of Corrections to Request for Information, Exhibits A-D, March 15, 1985. Staff notes that written assurances have been made that buses and ambulances will be provided to evacuate the Graterford inmates in the event of an emergency. Response of the Commonwealth of Pennsylvania, Department of Corrections, March 15, 1985. Therefore, in Staff's view, the alleged lack of training for civilian bus and ambulance drivers does not appear to constitute a "significant" deficiency in the Graterford plan. In addition, it now appears that interim compensating actions have been or will be taken with respect to any alleged deficiency.

In view of the foregoing and given the fact that Applicant's exemption request is intended to apply only during the Licensing Board's consideration of the Inmates' admitted contentions, it appears to the Staff that there may well be a sufficient basis to conclude that some or all of the criteria of 50.47(c)(1) have been met in this regard.

2. With respect to Intervenor's contention concerning the evacuation time estimate, the Graterford Inmates contend that the six to ten

hour evacuation time estimate given in the Commonwealth's plan for the prison is not valid. However, the Applicant maintains that, even assuming arguendo that the evacuation time estimate will have to be adjusted as the result of the hearing on this contention, such a deficiency would not be significant in the overall context of the emergency plan. Applicant's Renewed Motion For An Exemption at 11-12.

In commenting on the purpose of evacuation time estimates and their role in emergency planning, the Licensing Board noted:

The primary purpose of evacuation time estimates is to serve as a tool in the protective action decision-making process by providing a framework within which decision-makers can incorporate input on evacuation characteristics and traffic flows at the time of an actual emergency. As such, pursuant to NUREG-0654, time estimates are intended to be representative and reasonable so that any protective action decision based on those estimates would reflect realistic conditions. An overly conservative estimate could result in an inappropriate decision. Klimm, Tr. 13,871, 13,908, 17,046. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2) LBP-85-14, 21 NRC _____ at 31-32, (1985).

In view of the foregoing, a reasonable and representative time estimate is required so that the emergency planning decision-makers can determine the proper course of action to pursue in the event of a radiological emergency at Limerick. In the context of the present case, the Staff has previously noted its belief that this issue does not appear to be significant. ^{4/} For these reasons, many of which are also set forth in the Applicant's renewed motion, the Staff believes that a favorable finding may be reached under

^{4/} NRC Staff's Additional Views on Applicant's Motion --- for Exemption From the Requirements of 10 C.F.R., § 50.47(a) and (b), April 1, 1985.

50.47(c)(1) with regard to the concerns relating to the evacuation time estimates for the Graterford Prison.

C. The requirements of 10 C.F.R. § 50.12(a) regarding exemptions from the requirements of 10 C.F.R. Part 50

With regard to Applicant's request for an exemption from the applicable emergency planning regulations under 10 CFR § 50.12(a), the Staff similarly believes that the renewed motion for an exemption likewise may well provide a sufficient basis for concluding that the requirements of the Regulation - that the exemption is (i) authorized by law, (ii) will not endanger life, property or the common defense and security and (iii) is in the public interest - can be met. Specifically, as discussed above, the Intervenor's concerns regarding the adequacy of training appear to be resolved or readily susceptible to prompt resolution, given the commitments of the Applicant in this regard. See p. 5, supra. Similarly, with respect to the adequacy of the evacuation time estimates, the emergency planning exercise conducted at the Graterford Prison on March 7, 1985 and the subsequent favorable review of this exercise by the Federal Emergency Management Agency would appear to suggest that a basis can be articulated for the granting of an exemption under § 50.12(a) as to this concern. And under the terms of the Appeal Board's decision in ALAB-809, this Board could properly consider the present renewed request at this time and upon the existing documentation.

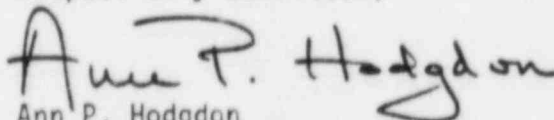
However, as the Staff has previously indicated, a hearing will be held on the Intervenor's two emergency planning concerns - training and evacuation time estimates - on July 15, 1985, and testimony addressing these issues will be filed by the parties within three days. Thus, given

the fact that within a very limited period of time the factual basis upon which the Board can rely in reaching any decision on the requested exemption will be substantially enhanced, the Staff strongly believes that the Board should defer consideration of the present request until the testimony of the parties has been filed and -- if necessary or helpful -- the sponsors of the testimony have been examined.

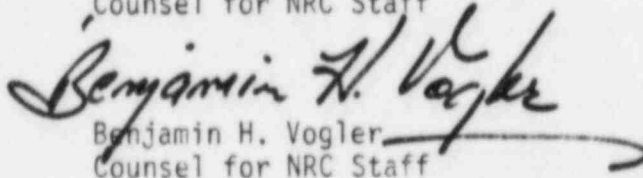
IV. CONCLUSION

For the reasons set forth above, the Staff suggests that this Board defer consideration of the Applicant's renewed motion for an exemption under both § 50.47(c)(1) and § 50.12(a) until after the testimony regarding Intervenor's two admitted contentions has been filed.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff



Benjamin H. Vogler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of July, 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT'S RENEWED MOTION FOR AN EXEMPTION FROM THE REQUIREMENTS OF 10 C.F.R. § 50.47(a) AND (b)" 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 5th day of July, 1985:

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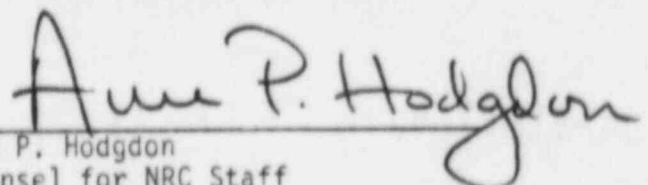
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