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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Appeal Board

In the Matter of :

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

: Docket Nos. 50-352, 50-353 02

NOTICE OF APPEALI. INTRODUCTION

The inmates at the State Correctional Institute at Graterford, Pennsylvania, through their attorney, Angus R. Love, hereby request this Board to review the order dated July 2, 1985 of the Licensing Board in the above-captioned matter regarding the inmates' exception to the Board's order of June 12, 1985. The inmates filed exceptions to the Board's order which admitted two of the eight proposed contentions of the inmates. The inmates took exception to five of the six rejected contentions. The inmates hereby request a review of the Board's finding that the inmates' arguments with respect to the five initially rejected contentions was without merit and their reaffirmation of their order of June 12, 1985. (See Board's Decision ASLBP No. 81-465-07 OL.)

II. PROCEDURAL HISTORY

Although the history of this issue has been recited many times in numerous pleadings by all parties, the inmates believe that it is important to once again outline the procedural history in this matter so that the Appeals Board can understand the many barriers that the inmates have faced in their attempt to

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bring their contentions to the attention of the Licensing Board. Initially, the inmates note that they sought to intervene in the licensing process in 1981. Their petition for intervention was accepted by the Licensing Board and its prior chairman, Lawrence Brenner, on June 1, 1982. No further action occurred regarding the issue of the Radiological Emergency Response Plan for the State Correctional Institute at Graterford until December 13, 1984. On that date, the inmates received a virtually incomprehensible document that purported to be the Radiological Emergency Response Plan for Graterford. The inmates had been given twenty days to file contentions based upon the receipt of the plan. The inmates were dissatisfied with the disclosure and appealed to this Board requesting the opportunity to review the entire plan under a protective order of the Court with their retained expert, Major John Case. Unfortunately, a stay of the twenty day requirement was denied and the inmates were forced to file contentions based upon the virtually incomprehensible plan. At the Appeal Board's suggestion, a compromise was worked out which enabled the inmates' attorney and their expert to review a virtually complete plan on March 18, 1985. The inmates then sought to revise their contentions based upon the new information, but were once again thwarted by the Licensing Board, who refused to allow any additional concerns to be discussed during a meeting on March 22, 1985 in Harrisburg, Pennsylvania, with all parties present. The Licensing Board then dismissed the inmates from the action and stated that "the deficiencies in the plan are not significant." (See page 5, part 1 of the order entitled Order Granting Applicant's Motion for Exception from the Requirement of 10 C.F.R. 50.47(a and (b) for a Period of

Time any Potential Contentions of Remaining Party are Considered by the Board.

The Board also went further on Page 6 of the same opinion when it stated, "It is a clear reflection that any deficiencies presently known are not of a significant nature." It is the inmates' contention that this Board has prejudiced itself with respect to the issues brought to them by the Graterford inmates and has not allowed their contentions to stand on their own merit. After being dismissed from the matter, the inmates once again appealed to the Appeals Council, which reversed the Board's order by its May 1st decision which was docketed as ALAB-806. Said decision ordered the inmates reinstated as an intervenor and gave them until May 15, 1985 in which to file their proposed revised contentions. Unfortunately, the Licensing Board once again stepped in with its decision of May 10, 1985, docketed as ASLBP No. 81-465-07 OL, in which they granted 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 inmates. Thus, the inmates, having fought for over three years for the opportunity to provide input into this issue, were once again met with a hostile Licensing Board. The inmates again appealed the Board's decision granting the exemption and once again, through the combined efforts of the Nuclear Regulatory Commission and this Appeal Board, the grant for an exemption was never finalized and the Licensing Board was ordered to respect the hearing rights of the Graterford inmates. (See Memorandum and Order of the Nuclear Regulatory Commission, June 11, 1985 CLI-85-11 and the Decision of the Atomic Safety and Licensing Appeal Board of June 17, 1985 ALAB-809.) Pursuant to the Appeal

Board's May 1, 1985 decision, the inmates filed their proposed revised contentions per said Board's request by May 15, 1985. The Licensing Board in its ruling on June 13, 1984 entitled, Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, which was docketed as ASLBP No. 81-465-07 OL, admitted two of the eight proposed revised contentions of the Graterford inmates. The inmates took exception to the six rejected contentions in their motion on June 24, 1985. The Board has rejected said motion in its most recent order of July 2, 1985, docketed as ASLBP 81-465-07 OL. This is the order that the inmates request this Board to review.

The Licensing Board's history of dealing with this issue indicates an inherent prejudice and hostility to this issue. The inmates point out as evidence of this fact that they have had to appeal three times in this year alone in order to get to the hearing stage with respect to their contentions. They also point to numerous instances where the Board has suggested in its decisions that the claims of the inmates are "not significant". (See Board's Order of May 9, 1985, ASLBP NO. 81-465-07 OL.) The Board has also suggested that the inmates have some ulterior motive in pursuit of their legal rights in this issue when they stated in the aforementioned order on page 3, "Unless the inmates are using judicial process to an end to which the Board is not privy...". The Board has further indicated its hostility to the inmates in this issue in numerous other procedural matters. An example of such includes informing inmates' counsel of hearing schedules and then not informing him of subsequent changes in such schedules, which resulted in counsel attempting to

attend hearings that did not exist. The Board has reprimanded inmates' counsel for his failure to attend the entire hearing process regarding each and every contention filed by all intervenors, a process that took thirty-nine days of hearings to complete. See Footnote 32 of the Appeal Board's Decision of May 1, 1985, ALAB 806, which states, "The Licensing Board is unduly critical of the inmates' failure to attend all of the hearings on offsite emergency planning issues. The Board recognized early on that the inmates had a separable special interest in this case not embraced within the more general planning issues. It is thus unreasonable to expect their counsel to have attended hearing sessions not related to the inmates' special interest. But once the prison issue surfaced, the inmates have actively participated. Moreover, the Licensing Board at one point acknowledged the spirit of cooperation of the inmates' counsel. (See Tr. 20, 585)." It is for the aforementioned reasons that the inmates suggest that the Licensing Board has not addressed their revised contentions in a fair and impartial manner.

III. LEGAL ARGUMENTS

A. Manpower Mobilization

The inmates take exception to the Board's ruling that the use of commercial telephone line call-up system necessary to mobilize the institution's manpower would be adequate in an emergency. The inmates also take exception to the Licensing Board's rejection of the inmates' allegation that there exists a necessity for a back up system to the call-up system currently utilized to mobilize the manpower necessary to conduct the evacuation. The inmates draw the

Board's attention to the matter of Cincinnati Gas and Electric Company, et al (William H. Zimmer Nuclear Plant Station, Unit Number 1) Docket No. 50-358; 17 NRC 760 1983. In this case, the Atomic Safety and Licensing Appeal Panel reviewed the adequacy of the offsite emergency planning of the applicant. At page 768, the opinion states, "The Board reasoned (and applicants concede) that during an emergency the commercial telephone circuits, including those serving the schools, likely would become overloaded as a result of heavy public usage and thus be unavailable for official use." 15 NRC AT 1570, 1592 through 1593; Tr. 6542. It is the inmates' understanding of the proposed call-up system that one individual using commercial phone lines would be instructed to call ten individuals and inform them that they must report to work immediately. These ten individuals would in turn call ten additional individuals until all such personnel would be notified and mobilized. The inmates fail to understand the rationale of the Board when it states that the prison has five dedicated telephone lines and a direct connection with the Pennsylvania State Police. The inmates believe that this misses the point of the call-up system which would be relying on people's private lines and not the institutional telephone system. The Board has also erred in its factual analysis of this issue in that the State Correctional Institute at Graterford only has one dedicated phone line with which it utilizes to contact the Pennsylvania State Police. Furthermore, the institution has four commercial telephone lines upon which it will attempt to

initiate the call-up system. See Commonwealth Response to Proposed Revised Contentions of Graterford Inmates, page 4. Such a discrepancy in the Board's view of the facts and the facts as they actually are further points out the need for a hearing on this issue in order to determine what exactly are the capabilities of the State Correctional Institute at Graterford with respect to this issue. The inmates also point out, as previously cited, the testimony of Rick Brown, which appears in the transcript on pages 18,226, 18,149 and 18,133, at which time he discusses a realistic likelihood that the commercial phone lines would be overburdened as they were during the flood of 1972. The inmates further point out that Mr. Brown is a communications technician with American Telephone and Telegraph and is therefore qualified to speak to the capabilities of the phone system in the Graterford facility.

The inmates also take issue with the Board's rejection of the inmates' contention that a back up system is necessary to insure prompt communication between all persons mobilized in the event of a nuclear emergency. The inmates specifically contest the Board's conclusion that SCIG is not a principal response organization and therefore does not warrant the planning standards as outlined in 10 CFR 50.47(b)6 and its NUREG-0654 implementing Criterion II F.1. The Board has held that these regulations do not apply to Graterford, thus Graterford does not have to have an alternative to the commercial telephone lines. The rationale utilized by the Board is that the State Correctional Institute at Graterford is not a principal response organization meriting such consideration, but is in fact a support organization under the Commonwealth's Radiological Emergency Response Plan. The inmates point to the NUREG-0654

Appendix 5 entitled Glossary, which defines what category various organizations should be included therein. The definition for principal organizations reads as follows: "Federal, state, or local agencies or departments or executive offices and nuclear utilities (licensees) having major or lead roles in emergency planning and preparedness." The inmates contend that the State Correctional Institute at Graterford could be defined as a principal or suborganization and that such distinctions are arbitrary. NUREG 0654 warns against making specific designations and suggests that the various parties involved in emergency plans and preparedness define the particular roles, functions and responsibilities. It is the inmates' contention that an institution such as Graterford which is in essence a city behind walls should be given serious consideration for an alternative communications back up in light of the inherent difficulty in evacuating such an institution and the significant population at issue. For these reasons, the inmates respectfully request the Appeal Board to reinstate these two issues with respect to the mobilization of manpower necessary to complete an effective response to a radiological emergency at the Limerick Generating Station.

B. Input of the Correctional Officers (AFSME)

The inmates contend that there is no reasonable assurance that the correctional officers union is aware of the Bureau of Corrections concept of operations and its relationship to the total effort. The Licensing Board has ruled that there is no basis for such an assertion and they have denied the inmates' request for participation in some form or other of the guards' union.

The inmates draw the Appeal Board's attention to the

testimony of FEMA witnesses Asher and Cunard from earlier testimony which is located at Tr. 20210, at which time the following principle was expanded upon. Anyone who is obligated to take a risk, should be adequately informed. This is the gist of Mr. Asher and Mr. Cunard's testimony on behalf of FEMA and goes to the heart of the inmates' contention that the guards' union is instrumental in the implementation of an effective response and thus should be adequately informed of the risks inherent in such an operation. As the plan points out, the correctional officers will have a major role in a protective response to a nuclear emergency. They will be the primary source for the evacuation of the inmates from the institution. They will be called upon to conduct a lock down of the entire institution, to assist in the loading of the buses and vans, and will provide the necessary security during the evacuation. Therefore, their role in the planning process is significant. Based upon the aforementioned principle that those deeply involved in such an operation should also be given sufficient opportunity to provide input into the process and this can only be done upon being informed adequately of their role in the operation.

The inmates also point out that in prior contentions litigated before the Licensing Board, two union representatives were allowed to testify. Mr. Tauss testified regarding the bus drivers' participation in the evacuation of the school children. Mr. Tauss is a union representative of the SEPTA organization. Furthermore, Mr. Morabito, who represents PSEA, was also allowed to testify as to the effectiveness of his union in the emergency response planning. The inmates contend that they should not be held to a lesser standard than previous intervenors have been given. The Board's denial of input from the guards' union

is clearly a higher standard of admissibility than was granted for Limerick Ecology Action or Friends of the Earth contentions. While it is understandable that the Board is trying to expedite this matter as soon as possible, the inmates point out that the current delays were no fault of their own and thus should not be penalized by the use of a higher standard than similar intervenors. In support of this assertion, the inmates refer to the decision of the Atomic Safety and Licensing Appeal Board of May 1, 1985, docketed ALAB-306, which states on page 16 "...Any delay likely to result at this stage cannot be laid at the feet of the Graterford inmates." Thus, the inmates contend that the Board's rejection of input from the correctional officers' union after allowing input on prior contentions regarding the roles of the unionized personnel, is inconsistent and in effect penalizing the inmates for something that they could not avoid.

C. Medical Services

The inmates take exception to the Board's ruling that rejects their contention based upon adequacy of medical services. The exception that the inmates raise deals with procedural matters in the handling of contentions under the guidelines of 10 CFR 50.47 and NUREG 0654. It is the inmates' contention that the applicant must carry the burden initially in proving that reasonable assurances exist that adequate medical services will be provided to those contaminated and/or injured individuals in the event of a nuclear emergency at Limerick Generating Station. See Consumers Power Company (Big Rock Point Plant) 16 NRC 1096 (1982). A reading of the Board's opinion dismissing this contention seems to indicate that it is the inmate's burden to prove the

inadequacy of the facilities in question. On page 7 of the Board's decision admitting certain revised contentions of the Graterford inmates and denying others, they state, "We are left in the dark as to what capacity it is that the inmates have in mind". This is an example of the Board's putting the cart before the horse and shifting the burden upon the inmates to prove the inadequacy of the medical facilities as opposed to the correct standard of the applicant proving the adequacy of such.

The inmates also contend that any discussions regarding the merits of said claims are premature. The inmates cite as a basis for this statement Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216 through 217 (1974); Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3) ALAB-216, 8 AEC 13, at 20 (1974); and Houston Lighting and Power Company (Alan's Creek Nuclear Generating Station, Unit 1) ALAB-590, 11 NRC 542, at 547 through 549 (1980). Thus, the inmates contend that the Board has overstepped their authority and shifted the burden inappropriately upon the inmates instead of the applicant.

D. Simulated Evacuation Plan Exercise

The inmates take exception to the Board's rejection 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 CFR 50.47(b)14. As part of the rationale explaining their decision to deny this particular contention, the Board states that the inmates failed to "justify any requirement for inclusion of possible scenarios from NUREG-0654, Criterion N 3". The inmates

draw the Appeal Board's attention to the aforementioned criterion N and further directs the Appeal Board's attention to the subcategory E, which reads, "A narrative summary describing the conduct of the exercises or drills to include such things as simulated casualties, offsite fire department assistance, rescue of personnel, use of protective clothing, deployment of radiological monitoring teams, and public information activities." To the right of this evaluation criteria is a graph which depicts the applicability and cross reference to plans. Under the category of Licensee, state, and local, an X appears which indicates to the inmates that this particular requirement of a narrative summary should be included in the conduct of drills and exercises as contemplated by 10 CFR 50.47(b)14. Thus, the inmates contend that they have justified the requirement for inclusion of possible scenarios in the table top exercise. Thus, they believe the plan is deficient in this respect.

The inmates further point out that the Board's rejection of this contention fails to take into account new guidelines promulgated by the Nuclear Regulatory Commission on Wednesday, May 8, 1985, appearing in the Federal Register, Volume 50, Number 89. See also Union of Concerned Scientists vs. NRC, 735 F.2d 1437 (D.C. Circuit 1984). This case vacated a prior NRC 1982 amendment (47 FR 30232, July 13, 1982) to its emergency planning and preparation regulations which stated that emergency preparedness exercises were part of the operational inspection process and thus not required for any initial licensing hearing or decision. The ruling in the aforementioned case held that "Congress did not grant the commission discretion to remove so material an issue as the results of offsite emergency preparedness for required Section 189(a) hearings." See Union of Concerned Scientists vs. NRC supra at 1451. Thus, the inmates

contend that the Board has failed to apply this new more appropriate standard as it stated that the inmates' contention lacked a regulatory basis. See Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, ASLBP No. 81-465-07 OL page 11. The inmates respectfully request that the Appeal Board overturn this decision in light of the newly promulgated regulations.

While the inmates do not dispute the fact that the drill was found to be adequate by FEMA, pursuant to 50.47(b)14, they do point out that such a finding by FEMA that plans are adequate and capable of being implemented is entitled to a rebuttable presumption in NRC licensing proceedings. See 10 CFR 50.47(a)2 and generally FEMA/NRC Memorandum of Understanding, 45 FED. REG. Sec. 2713, December 16, 1984 and Southern California Edison Company et al(San Onofre Nuclear Generating Station, Unit 1 and 2) ALAB-690, 16 NRC 127 at 349 (1982). Therefore, the Board's assertion that "according to FEMA it is successful", see Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, page 11, is inaccurate. The inmates respectfully request the right to rebut the findings of FEMA especially in light of the new regulation cited previously. Thus, the inmates contend that this issue should be more fully litigated.

E. Panic Factor

The inmates once again contend that the Board has put the proverbial cart before the horse with respect to the panic issue. The inmates in their proposed revised contentions documented several previous disturbances at the State Correctional Institute at Graterford that caused considerable concern,

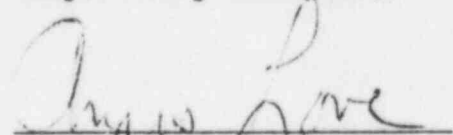
monetary expense, anxiety, and manpower mobilization. These similar situations should not be rejected out of hand by this Board. These instances will show the difficulty that the Department of Corrections faces when confronted with such emergencies and will indicate the responses available to the institution in the event of such an emergency. Therefore, the inmates contend that they have provided sufficient evidence of the potential for panic necessary to create a specific basis for this contention.

The inmates draw the Appeal Board's attention to the Board's statements on page 15 of their decision admitting certain contentions and denying others, 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 statements represent conclusions of law which can only be made after a full hearing on the issue. The inmates, as mentioned in the previous section, claim that the Licensing Board cannot now judge the merits of their claims. Clearly, such statements as the guards will do their duty and the inmates will be restrained from evacuating spontaneously, draw conclusions far in advance of a proper evidentiary foundation being provided. Thus, the inmates contend that the rejection of their contention is premature.

IV. CONCLUSION

For the aforementioned reasons, the inmates respectfully request this Appeal Board to overturn the Licensing Board's decision of June 12, 1985 and reinstate the rejected contentions for the reasons herein. The history of this case has been littered with much procedural maneuvering and little testimony regarding the merits of the inmates' claims. It is the inmates' contention that the Licensing Board's hostility to this issue is primarily responsible for the procedural quagmire. The inmates respectfully request that the Appeal Board allow them to put on testimony regarding the various issues that they have raised in this Motion so that a complete and thorough record can be made regarding this unique and potentially dangerous issue.

Respectfully submitted,


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Station,
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 NOTICE OF APPEAL was mailed to the following list on Thursday, July 11, 1985, by first class mail, postage prepaid.

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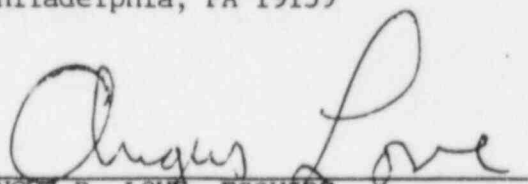
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