

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

Philadelphia Electric Company

(Limerick Generating Station,
Units 1 and 2)

} Docket Nos. 50-352
50-353

Request for Nondisclosure of Confidential Information

By letter dated today, the Commonwealth is providing to counsel for the intervenor-Graterford inmates an unclassified copy of the Pennsylvania Bureau of Correction, Radiological Emergency Response Plan prepared for response by the State Correctional Institution of Graterford to incidents at the Limerick Generating Station.

Pursuant to Section 2.790 of the Commission's regulations it is hereby requested that the following information be withheld from public disclosure: Attachment B (support facilities), Attachment C, Attachment E (training, preparedness measures, and exercises), Attachment F (return to the State Correctional Institution at Graterford), Attachment G (Radiological response procedures), Attachment H, Attachment I, Attachment J, and Attachment K as well as references regarding relocation sites, number of inmates and their classification level.

It is the position of the Bureau of Correction that the information sought to be withheld could result in a security breach if released to individuals and organizations other than on a strict "need to know" basis. The attached affidavit from the Bureau explains the basis for concern with regard to the Graterford facility in particular. The Bureau has made this position known to the Pennsylvania Emergency Management Agency (PEMA), which is in turn making this plan available for review by counsel for the Graterford inmates.

In view of the maximum security nature of the Graterford facility, the emergency response plan is highly sensitive and should be accorded protection from disclosure along the same lines as an applicant's site security plan. Under Section 2.790(d) of the Commission's regulations, security plans are "deemed to be [protected] commercial or financial information." Like an applicant's security system, access in and out of the Graterford facility is

controlled, mechanisms are in place to detect unauthorized access and/or egress from the facility, and the facility maintains a security organization, including guards. See 10 C.F.R. 73.45, 73.46.

The form of the plan provided to counsel for the inmates here provides relevant information regarding emergency response by the Graterford facility and is in accordance with the guidelines for release of a security plan outlined in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2, ALAB-410, 5 NRC 1398 (1977)). By the same token, release of the information in the Graterford plan described above would be directly contrary to the public interest in protection from a security breach of the Graterford facility.

Respectfully submitted,

Zori G. Ferkin

Zori G. Ferkin
Assistant Counsel
Governor's Energy Council

Dated: December 13, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
Philadelphia Electric Company)	Docket Nos. 50-352
(Limerick Generating Station,)	50-353
Units 1 and 2))	

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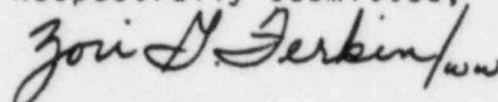
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The form of the plan provided to counsel for the inmates here provides relevant information regarding emergency response by the Graterford facility and is in accordance with the guidelines for release of a security plan outlined in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2, ALAB-410, 5 NRC 1398 (1977)). By the same token, release of the information in the Graterford plan described above would be directly contrary to the public interest in protection from a security breach of the Graterford facility.

Respectfully submitted,

A handwritten signature in cursive script, reading "Zori G. Ferkin", followed by a small, stylized mark that appears to be "w".

Zori G. Ferkin
Assistant Counsel
Governor's Energy Council

Dated: December 13, 1984

MONTGOMERY COUNTY LEGAL AID SERVICE

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PLEASE REPLY TO: Norristown

February 8, 1985

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: In the Matter of PHILADELPHIA ELECTRIC COMPANY
Limerick Generating Stations
Units 1 and 2/ Nos. 50-352 and 50-353

Dear Sir/Madam:

Enclosed please find our Notice of Appeal in reference
to the above-captioned matter.

Sincerely,

Angus R. Love, Esquire

ARL/mf
Encl.

cc: With Encl.
Helen F. Hoyt
Dr. Richard F. Cole
Dr. Jerry Harbour
Troy B. Conner, Jr., Esq.
Director, Penna. Emerg.
Management Agency
Charles W. Elliott, Esq.
✓Atomic Safety & Licensing
Appeal Board Panel
Atomic Safety & Licensing
Board Panel

Rest of Service List without encl.

85-213449 (2)

FOIA-85-304

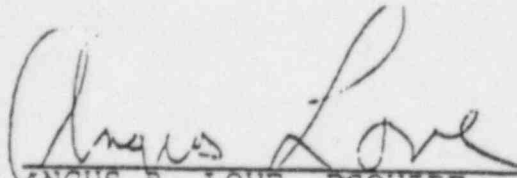
A-8

**Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

Gregory Minor
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Timothy R.S. Campbell, Director
Department of Emergency Services
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West Chester, PA 19380

(**Received original)


ANGUS R. LOVE, ESQUIRE
Montgomery County Legal Aid

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before The Atomic Safety and Licensing Appeal Panel

In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
Limerick Generating Stations :
Units 1 and 2 : NOS. 50-352 and 50-353

NOTICE OF APPEAL

I. INTRODUCTION

On September 18, 1981, the inmates at the State Correctional Institute at Graterford filed a Petition to Intervene in the above-captioned matter. On November 16, 1983, the Nuclear Regulatory Commission staff issued a response to said petition indicating that the inmates do have standing to intervene in this matter. On April 20, 1984, in a special pre-hearing order the Licensing Board granted the inmates twenty days to submit their contentions upon receipt of an evacuation plan for the State Correctional Institute at Graterford. Said inmates were concerned about guaranteeing their safety in the event of an incident at the Limerick facility. On December 14, 1984, counsel for inmates received a sanitized version of the Pennsylvania Bureau of Correction Radiological Emergency Response Plan, a copy of which is attached as Exhibit "A". After review of said plan the inmates

850-2130-060-899

filed a Motion for order requiring full disclosure of the plan under a protective order of the Court. They further requested that the twenty-day time period for filing their contentions not begin until full disclosure of the plan is permitted under the appropriate circumstances. On January 29, 1985, a hearing was held on the inmates request for disclosure of the unsanitized version before the Licensing Board, Judge Hoyt presiding. At that time, Chairman Hoyt denied the inmates request to review said plan under a protective order or in any other way, and ordered the inmates to submit their contentions based upon the sanitized version of the plan within twenty days. They further denied inmates counsel's request for a stay of the twenty days pending an appeal of that decision to the Atomic Safety and Licensing Appeal Panel.

II. The Appeal Board Should Allow this Interlocutory Appeal because the Licensing Board's Ruling was Based on an Erroneous Legal Standard, 10 CFR 2.790(a) and Said Ruling Affects the Basic Structure of the Proceedings in a Pervasive or Unusual Manner and Threatens the Petitioner with Immediate and Serious Irreparable Impact, which as a Practical Matter, could not be Alleviated by a Later Appeal.

In order to allow an interlocutory appeal, our courts have indicated that a ruling must not only be legally erroneous but it must also affect the basis structure of the proceedings in

a pervasive or unusual manner, or threaten the petitioner with immediate or irreparable impact which, as a practical matter, could not be alleviated by a later appeal. Public Service Company of Indiana (Marble Hill Nuclear Generating Station Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977). Thus, in order for the Licensing Appeal Board to accept an appeal on a matter that is interlocutory and not final, these two conditions must be met. In the above-captioned matter, the inmates contend that both criteria are satisfied.

With regard to the contention that the panel utilized a legally erroneous standard, the inmates draw the attention of the Appeals Board to 10 CFR §2.790(a), which states that a balancing test should be utilized when determining the rights of an intervenor to review sensitive information under a protective order of the Court. Said balancing test should weigh the interests of the "person...urging non-disclosure and the public interest in disclosure". 10 CFR §2.790(a) and Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant Units 1 and 2) 5 NRC 1398 (1977). This case involved the release of the site security plans to interested intervenors. Said Court ruled that the applicants request for nondisclosure was outweighed by the public interest in disclosure and allowed for the intervenors to review portions of the plan under the protective order of the court. While the case before us deals with the evacuation plan of a

prison and not the site security plan of a nuclear facility, it is a case of first impression and the inmates contend that by analogy the standards utilized for site security plan are adequate in order to formulate a legal argument for their request for full disclosure of the Bureau of Corrections evacuation plan. Chairman Hoyt, in making her ruling denying the inmates access to the unsanitized evacuation plan cited erroneously the standard mentioned in the Pacific Gas and Electric case. Chairman Hoyt balanced the inmates request for further disclosure against the public's fear that said disclosure would harm the safety of the public at large. Clearly, this represents an erroneous reading of 10 CFR 2.790(a) and the Pacific Gas and Electric case. The correct balancing requires the interests of the individual urging nondisclosure, i.e. P.E.M.A. or the applicant vs. the public's interest in disclosure, i.e. the Graterford inmates as intervenors. Thus, the Licensing Board has misconstrued the balancing test and failed to apply the appropriate legal standard in its decision making process that resulted in the inmates being denied the opportunity to inspect the evacuation plan under a protective order or any other way.

The second factor that must be proven in order to allow an interlocutory appeal involves the intervenors position given the ruling of the Licensing Board. The intervenors contend the denial of access to the unsanitized version of the evacuation

plan causes an immediate and serious irreparable impact upon their ability to form valid contentions in this licensing process. Initially, the inmates contend that the unsanitized version of the plan is so overly censored as it is virtually uncomprehensible, and thus it is virtually impossible for them to form a reasonable contention based upon the information given. See Exhibit "A," sanitized version of the plan attached. Inmates contend that their safety and well being may not be protected under the current evacuation plan. A review of the sanitized version of the plan reveals little details about the workings of the plan itself. The deletions from said plan are so pervasive that it is unreasonable to force the intervenors to file their contention based upon such limited information. Inmates further contend that their retention of John Case, a warden of the Bucks County Prison for fifteen years and a member of the United States Marine Corps for twenty-one years, during which he received a top secret Q classification, should have been sufficient to alleviate the fears of the applicant and P.E.M.A. as to the confidentiality of such a review under the protective order of the court. Deputy Commissioner Erskine DeRamus testified that he has known Mr. Case for over fifteen years and that he considers him to be a trustworthy individual. He further testified that he would have no problem with Mr. Case reviewing said plan under a protective order of the court. Thus, the persons wishing to keep said plan classified presented

witnesses on their behalf that supported the inmates' contention their review by their expert under a protective order would be confidential with no fear of disclosure to said inmates.


Furthermore, Judge Hoyt commenting on the sanitized version admitted that certain portions were unreadable. As evidence of the overly broad nature of the censorship of this plan the intervenor inmates referred to page E-1-7 which states under Section G, "The SCIG infirmary has a capacity for (blank) patients." In support of the inmates' contention that the censorship was so broad that it included information already within the public domain, they offer Exhibit "B" attached, a copy of the December 1984 and January 1985 edition of Graterfriends, a publication of community and inmate volunteers which is circulated throughout the Graterford community within and outside the walls. Page 10 has an article entitled "SCIG Infirmary Pleases Administrator," authored by Joan Gauker, a community volunteer at SCIG. The third to last paragraph begins, "The extended care or recovery unit has a 25-bed capacity broken into four wards." This illustrates the overly broad concept of censorship utilized by the Bureau of Corrections in sanitizing the evacuation plan. It further illustrates the incomprehensible nature of the sanitized product.

It has been the inmates' contention throughout that full disclosure of the plan is necessary in order for them to file

valid contentions. The inmates, upon request of Chairman Hoyt, approached their expert, John Case, and asked of him what additional information in the plan he would require in order to make a valid judgment regarding the viability of such. Mr. Case responded and the inmates responded accordingly in their supplemental motion, that the whole plan was necessary in order to determine the viability of such. Inmates counsel, in response to the same question from Judge Hoyt, listed several specific concerns, including the number of buses necessary to conduct such an evacuation, their availability, the routes to be taken to and from the institution, the security equipment necessary, such as handcuffs and shackles, the weapons necessary to provide safe passage, and the destination to which the inmates would be relocated. Therefore, it is the inmates request that this Honorable Board allow the interlocutory appeal due to the fact that the Licensing Board decision was based upon erroneous legal standard and that the unavailability of the unsanitized plan, even under a protective court order with a recognized and trustworthy expert in the field of corrections, substantially alters their ability to form an adequate contention regarding the evacuation plan of the State Correctional Institute at Graterford. Therefore, they request that this Board overturn

Chairman Hoyt's decision and allow for the unsanitized version of said plan be permitted to be reviewed under a protective order of the court by the inmates expert, John Case.

Respectfully submitted,



ANGUS R. LOVE, ESQUIRE
Montgomery County Legal Aid

12/28/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Philadelphia Electric Company	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station,)	
Units 1 and 2))	

APPLICANT'S RESPONSE TO GRATERFORD INMATES
MOTION FOR AN ORDER REQUIRING FULL DISCLOSURE BY
PEMA OF THE EVACUATION PLAN FOR THE
STATE CORRECTIONAL INSTITUTE AT GRATERFORD

On December 20, 1984, counsel for the inmates of the State Correctional Institute at Graterford ("Graterford") who are intervenors in the captioned proceeding moved the Atomic Safety and Licensing Board ("Licensing Board") to require full disclosure by the Pennsylvania Emergency Management Agency ("PEMA") of the evacuation plan for Graterford.^{1/} As justification, the motion states that the Licensing Board's April 20, 1984 Special Prehearing Conference Order had granted the inmates 20 days to submit contentions upon receipt of the evacuation plan for the institution. It further alleged that on December 14, 1984,

^{1/} Motion for Order Requiring Full Disclosure by Pennsylvania Emergency Management Agency of the Evacuation Plan for State Correctional Institute at Graterford and Memorandum in Support of Motion.

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counsel for the inmates received an unclassified copy of the Pennsylvania Bureau of Corrections' Radiological Emergency Response Plan.^{2/} Counsel stated that "[u]pon review of said document, it became obvious that major portions of said plan have been removed. The remaining portions made little or no sense, giving counsel an inadequate basis from which to form contentions pursuant to the Board's Order of April 20, 1984."^{3/} The motion asks for the issuance of a protective order allowing counsel and any recognized experts to review the entire plan under appropriate, but undefined conditions. The motion also requests that the 20 day time period allowed for the filing of the contentions not begin until such disclosure has been permitted.^{4/}

Applicant opposes the requested relief. It is beyond question that the Graterford Emergency Response Plan falls within the requirements of 10 C.F.R. §2.740(c) as a document which should be the subject of a protective order. That position is supported by the affidavits which accompanied the submission of the Graterford plan and is apparently not contested by counsel for the inmates. The question

^{2/} A copy of the plan as received by counsel for the Graterford inmates was attached to the pleading. Other parties had only received the transmittal letter and affidavits.

^{3/} Graterford Prisoners' Motion at 2.

^{4/} Id. at 3.

remaining is whether an unexpurgated copy of the plan should be released and, if so, what conditions should be imposed on release to counsel for interested parties and their experts.

In Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 590 (1982), the Atomic Safety and Licensing Board rejected an applicant's argument that an intervenor must frame a sufficiently specific contention on information available to it in the public record despite the fact that no information about the plan is available.^{5/} The Board then permitted the intervenor access to the security plan in order to permit it to write the contention:

Because an intervenor cannot reasonably be required to advance specific contentions about a security plan he has never seen, and because Palmetto has expressed a formal interest in the Catawba plan, we believe we could at this juncture order the Applicants to grant Palmetto access to that plan. We could now find that disclosure of the plans is "necessary to a proper decision in the proceeding." 10 CFR 2.744(e), as recently amended, 46 Fed. Reg. 51718, 51723. .

However, the Board conditioned its disclosure order on the intervenor having obtained the services of a qualified security plan expert.

^{5/} This case discusses the release of the security plan for the facility. Applicant submits that because of the parallels regarding the consequences of the information contained therein such a plan and the plan for Graterford prison should be treated similarly.

In a subsequent order,^{6/} the Board agreed with the arguments of the Staff and applicants that both expert assistance and a protective order are prerequisites to access to a security plan. The intervenor had not obtained a security expert. It therefore denied access to the plan to intervenor.

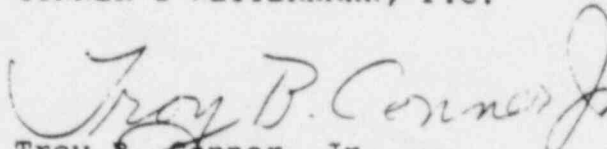
Thus, Applicant submits that before the question is reached as to whether access should be granted to attorney for Graterford inmates, an inquiry must be made as to whether a qualified expert has been retained by counsel. The Board must specifically approve this expert's credentials to testify with regard to the particular problems of evacuation of prisoners from Graterford. The Board should therefore order that within 5 days counsel for the Graterford inmates submit the name and professional qualifications of any proposed expert such that the Board can make a determination as to whether the individual is

^{6/} Catawba, supra, Memorandum and Order (Overruling Objections Following Prehearing Conference, Denying Requests for Referral to the Appeal Board, and Addressing Certain Related Questions) (July 8, 1982) (slip op. at 14).

qualified.^{7/} At that point, it may determine whether 10 C.F.R. §2.744 requires access to the security plan.^{8/}

Respectfully submitted,

CONNER & WETTERHAHN, P.C.


Troy B. Conner, Jr.
Counsel for the Applicant

December 28, 1984

^{7/} Such a short time period is not unreasonable. Presumably, an expert has been retained to assist in writing the contentions. The requirement to prepare contentions regarding the Graterford plan has been known for a number of months.

^{8/} If access is granted, a protective order similar to that in NRC proceedings involving security matters would be warranted. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 14-17 (1980). In accordance with Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1404 (1977), access should be given only to those portions of the plan which are relevant to evacuation of the inmates.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Philadelphia Electric Company	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response to Graterford Inmates Motion for an Order Requiring Full Disclosure by PEMA of the Evacuation Plan for the State Correctional Institute at Graterford," dated December 28, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 28th day of December 1984:

Helen F. Hoyt, Esq.
Chairperson
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Jerry Harbour
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
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Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
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Washington, D.C. 20555

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Washington, D.C. 20555

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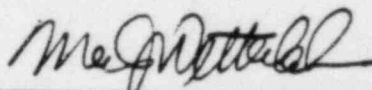
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Pennsylvania Emergency
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Safety Building
Harrisburg, PA 17120



Mark J. Wetterhahn

12/31/84

10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

853059

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station,)	
Units 1 and 2))	

RESPONSE OF THE COMMONWEALTH OF PENNSYLVANIA
TO GRATERFORD INMATES' DECEMBER 20, 1984
MOTION FOR FULL DISCLOSURE OF GRATERFORD RERP
AND REQUEST FOR ADDITIONAL TIME TO FILE
MEMORANDUM IN SUPPORT OF SAID RESPONSE

On December 13, 1984, the Commonwealth made available to counsel for the intervenor-inmates at the State Correctional Institution at Graterford an unclassified copy of the Pennsylvania Bureau of Correction, Radiological Emergency Response Plan prepared for response by the Graterford institution to incidents at the Limerick Generating Station. The Commonwealth requested that certain portions of the emergency plan be withheld from disclosure, on the basis that release of such information would be "directly contrary to the public interest in protection from a security breach of the Graterford facility."

By motion dated December 20, 1984, counsel for the Graterford inmates requests this Board issue a protective order "allowing counsel and any recognized experts to review the entire plan under appropriate circumstances." The motion requests further that the twenty-day time period allowed for the filing of contentions based upon the

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Graterford plan be tolled until full disclosure of the plan is permitted.

The Commonwealth opposes the motion in part. Specifically, the Commonwealth's position is that there be no further disclosure of the Graterford emergency response plan. The Commonwealth does not take a position with regard to the running of the twenty day time period in which inmates have been directed by prior Board orders to file contentions.

The Commonwealth intends to file a memorandum in support of its response to the inmates' request for disclosure of the Graterford plan. Additional time is needed for preparation and filing of said memorandum, the reasons for which are set forth below. Accordingly, the Commonwealth requests that it be allowed until January 18, 1985 to file a memorandum in support of its response.

The radiological emergency response plan served upon prisoners' counsel Angus Love on December 13, 1984 by the Commonwealth was developed principally by the Pennsylvania Bureau of Correction [Bureau]. Management and control of the Graterford facility is the direct responsibility of the Bureau. Consequently, the response of the Commonwealth to prisoners' motion and any other matters involving the Graterford emergency plan must of necessity involve the Bureau. The Board so acknowledged on this record (See Tr. 15,835-36).

The undersigned Commonwealth counsel has been informed that Bureau officials concerned with the Graterford plan, due to Christmas holiday schedules and other obligations,

are not now available and will not be until after the first week in January. Given the time of filing of the inmates' motion, it was not possible to ascertain this information prior to the Christmas weekend and the concomitant absence of these officials. The Commonwealth cannot respond to the matters raised in the inmates' motion without consultation with the Bureau. In view of the sensitivity of the Graterford plan (see Affidavit of Glen R. Jeffes, Acting Commissioner of Corrections ffers attached to Commonwealth Request for Non-Disclosure dated December 13, 1984), the Board is respectfully requested to grant the Commonwealth until January 18, 1985 to file its memorandum in support of its response to the Graterford inmates' motion for disclosure of the Graterford radiological emergency response plan.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Zori G. Ferkin". The signature is stylized with a large, sweeping "Z" and a cursive "F".

Zori G. Ferkin
Assistant Counsel
Governor's Energy Council

Dated: December 30, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
	)	50-353
(Limerick Generating Station,)	
Units 1 and 2)		

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Commonwealth Response to Graterford inmates Motion" were served on the following by United States first class mail on the 31st day of December 1984:

Helen F. Hoyt
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Conner and Wtterhahn, P.C.
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Washington, D.C. 20006

Dr. Richard F. Cole
Administrative Judge
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Washington, D.C. 20555

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Office of the Secretary
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Washington, D.C. 20555

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
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Washington, D.C. 20555

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Panel
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Washington, D.C. 20555

Benjamin H. Vogler, Esq.
Counsel for NRC Staff
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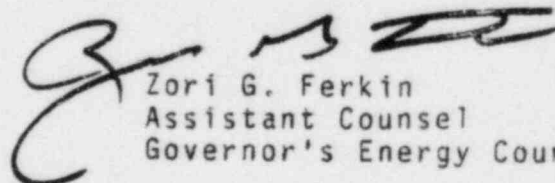
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Date: December 31, 1984

A-5

the State Correctional Institution at Graterford, Pennsylvania (SCIG). The Licensing Board acknowledged that the inmates were unable to present contentions during the prehearing conference because they had not had available to them the separate plan for the SCIG. The inmates were given twenty days after receipt of the plan to submit any contentions that they might have based upon the plan. The Licensing Board encouraged the inmates to discuss with the Commonwealth any concerns that they had with the plan in an effort to resolve any differences.

On December 13, 1984, the Commonwealth provided to the inmates counsel a copy of the Radiological Emergency Response Plan, Appendix E, Annex 1 prepared for SCIG. Certain information was deleted by the Commonwealth for security reasons. An explanation for the deletions was provided in an affidavit by Glen R. Jeffes, Acting Commissioner of Corrections of the Commonwealth of Pennsylvania. In response to the receipt of the plan with deletions, the inmates filed the instant motion. Staff is not aware of any discussions that may have taken place between the inmates and representatives of the Commonwealth to resolve any differences.

III. DISCUSSION

The issue of the protection from public disclosure of certain plans and other information generally arises in NRC licensing proceedings in connection with the protection of the security plan developed for the

nuclear facility. ^{2/} However, the propriety of withholding certain information in connection with a nuclear plant security plan is on its face quite similar to the issue presented by the Commonwealth and the inmates, i.e., the treatment of sensitive emergency planning information which if not properly protected could have serious consequences to the public at large.

In addressing the release of information concerning the details of a security plan, we are faced with two countervailing forces. The desire of the developer of a security plan to withhold as much information as possible about the plan from outside sources and the expressed need of intervenors to have as much detail about the plan as possible to assist in the development of its case. See, ALAB-410, supra. In the Limerick proceeding, the inmates seek more detail about the offsite emergency plans for their facility in order to determine whether contentions should be raised. Motion, at 3. With these countervailing forces in mind, the Appeal Board has determined that under certain circumstances and with specific protection it is appropriate to provide a security plan to third parties. Id. However, it is important to understand the circumstances surrounding the release of a security plan.

The Appeal Board acknowledges that there may be appropriate circumstances when a plan should be released to interested parties, however, that does not mean the plan should be released in its entirety,

^{2/} See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744 (1980); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977).

or to anyone selected by the third party or that it should be released without protective safeguards. ALAB-410, at 1404. In the case of nuclear plant safeguards the Appeal Board, in ALAB-410, has provided guidance in making this determination. First, the Board observed that only those portions of the plan that are relevant and necessary for the litigation need be released. Secondly, as few of the "gory details" as possible need be released. Thus, a "sanitized" version of the plan may be released to the intervenor's counsel and its qualified expert, together with a general description of the types of information omitted from each section. Finally, no information is released unless an appropriate protective order and non-disclosure affidavits are executed. ALAB-410, at 1404.

While the inmates suggest that they can see no analogy between the need to protect site security and the asserted need to protect from release the evacuation plan for the SCIG, ^{3/} the Staff does believe that such an analogy exists in that the purpose and the need for protecting both types of information is the same. The Commonwealth has made a convincing presentation through the affidavit of the Acting Commissioner of Corrections as to why it needs to protect from disclosure the details and specifics of its evacuation plan for the SCIG. Affidavit, of Glen R. Jeffes.

Mr. Jeffes asserts in his affidavit that the SCIG is a high security prison, with a large number of dangerous criminals who could take

^{3/} We note that inmates in fact acknowledge that a protective order is appropriate under these circumstances. Motion at 3.

advantage of the classified information to assist in planning an escape. Moreover, he asserts that relatives of inmates could use the classified information to assist inmates in planning an escape. Jeffes Affidavit, at 4-5. Mr. Jeffes' qualifications, which are set forth in his affidavit, clearly demonstrate that he has sufficient expertise in this field to support his opinions. On the other hand, the inmates present no expert opinion and rely exclusively upon the representation of counsel. See, Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19 (1983). ^{4/}

The Commonwealth also argues that it cannot reveal additional information, even under a protective, because of experiences that it has had where "attorneys have, or have been suspected of, divulging to inmates materials almost as sensitive as this plan. Jeffes Affidavit, at 5. Thus, they claim that there is a reasonable suspicion that, even though they are given assurances by an attorney for the inmates that the plan will not be divulged, that it will be divulged to the inmates in some form or another. Jeffes affidavit, at 5. The Appeal Board has addressed this very same argument and has found that once it is determined that a "sanitized" version of the plan is available and an appropriate protective order is issued with a signed non-disclosure affidavit there must be a specific

^{4/} In Byron, the Appeal Board stated in rejecting an effort by the Staff to protect from disclosure certain information that, "The difficulty with this line of argument is that it is advanced by Staff counsel, entirely unsupported by the affidavit of any NRC official actually responsible for the conduct of either inspections or investigations." Likewise, the inmates have presented no affidavit of an expert knowledgeable in the evacuation of prisoners.

and factual basis for precluding the attorney and a qualified expert from reviewing the plans. ^{5/} In connection with the pending matter no showing has been made that the attorney for the inmates will not comply with an appropriate protective order and nondisclosure affidavit.

Accordingly, the Staff believes that the inmates have not made an adequate showing supported by the affidavits of experts establishing that it needs specific information beyond that which the Commonwealth has made available. On the other hand, the Commonwealth has provided a "sanitized" version of its plan of the SCIG and has supported its exclusions by an expert in the field. We suggest that in keeping with the directions of this Licensing Board in its April 20, 1984 order and consistent with the guidance of the Appeal Board, the inmates should be required to specify the information they need, based on expert opinion, which is beyond that provided in the "sanitized" version. By providing this type of information, the inmates will place this Licensing Board in a position to rule on specific concerns as opposed to the present motion which seeks the entire plan. In the event that the inmates show that they are entitled to additional information beyond that already provided by the Commonwealth then the Licensing Board should issue an appropriate protective order and any authorized person who seeks to review the classified information should execute a nondisclosure affidavit.

^{5/} Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), ALAB-592, 11 NRC 744 (1980); Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980); see also, ALAB-735, supra. (disclosure of sensitive material pursuant to a protective order provides protection of the disclosure of such information on the assumption that protective orders will be obeyed).

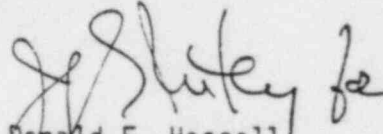
IV. CONCLUSION

Based on the foregoing, the NRC staff submits that the Licensing Board should require the inmates to follow the steps outlined above before finally ruling on their motion.

Respectfully submitted,



Joseph Rutberg
Assistant Chief Hearing Counsel



Donald F. Hassell
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 2nd day of January 1985

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

50-353

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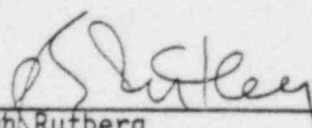
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1/10/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Philadelphia Electric	)	Docket Nos. 50-352,
Company	)	50-353
)	
(Limerick Generating)	
Station, Units 1)	
and 2))	

MEMORANDUM IN SUPPORT OF RESPONSE
OF THE COMMONWEALTH OF PENNSYLVANIA TO
GRATERFORD INMATES' DECEMBER 20, 1984 MOTION

I. Introduction

On December 30, 1984, the Commonwealth filed its response to the Graterford inmates' December 20, 1984 motion for full disclosure of the Graterford radiological emergency response plan. In that response, the Commonwealth requested until January 18, 1985 to file a Memorandum in support of its response.

The Applicant and the NRC Staff each filed responses to the Graterford inmates' motion. Both Applicant and NRC Staff questioned the relief requested by the inmates and recommended further action be taken prior to a Board ruling on the motion. In particular, the NRC Staff recognized that the protection to be accorded an evacuation plan for a maximum security correctional institution is, in fact, analogous to the extent of protection required by NRC regulation for a site security plan. Such regulations, however, and case law which interprets these rules allow

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for security plan disclosure under certain conditions. In this instance, the Commonwealth believes there should be no further disclosure of the Graterford plan, and asks that this Board take the following discussion into consideration in ruling on the inmates' motion.

II. Discussion

After exhaustive legal research, it appears to the Commonwealth that the issue before this Board regarding the disclosure of an evacuation plan for a prison is a case of first impression. There are, however, numerous decisions by the United States Supreme Court which recognize the difficulty inherent in prison administration and, therefore, instruct that wide-ranging deference be accorded the decisions of prison administrators.

In Bell v. Wolfish, 441 U.S. 520 (1979), the Supreme Court clearly outlined its opinion as to the deference to be accorded the decisions of prison administrators. The Court said:

Prison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry Prison administrators, therefore, should be accorded wide-ranging deference in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security. Such considerations are particularly within the province and professional expertise of correctional officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

441 U.S. at 547-48. An example of the deference accorded prison officials may be found in Bell where the Court was asked to find that the strip search policy of the particular bureau of prisons involved was an illegal search and seizure. The prison bureau in this case required that inmates expose their body cavities for visual inspection as part of a strip search conducted after every contact visit with a person from outside the institution. Even though there was only one instance in the history of the institution in question where contraband was actually found during such a search, the corrections officials had testified that the cavity searches were necessary not only to discover weapons, drugs and other contraband that might be entering the institution but also to deter smuggling of such items into the prison. Upon balancing the need for security against the intrusion suffered by the inmates, the Court upheld the strip search procedure as constitutional, in recognition of the views of the corrections professionals.

In Procunier v. Martinez, 416 U.S. 396 (1974), the Court reviewed institutional rules and regulations which prohibited receipt or mailing by inmates of letters that contained language which unduly complained about prison conditions or magnified grievances. The institution also prohibited correspondence that was lewd, obscene, defamatory or otherwise inappropriate. Although in this instance the Court found the specific regulations at issue too restrictive, it approved the censorship of prisoner mail where a "regulation

authorizing mail censorship furthers one or more of the substantial governmental interests of security, order and rehabilitation" and limited First Amendment freedoms "no greater than necessary or essential to the protection of the particular governmental interest involved." 416

U.S. at 413. In reaching its decision the Court explicitly recognized that prison administrators face great difficulties in execution of their duties, and courts should accordingly defer:

prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. . . . courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform.

Id. at 404-05. See also Hewitt v. Helms, 459 U.S. 460 (1983); Jones v. North Carolina Prisoners Labor Union, 433 U.S. 119 (1977); Pell v. Procunier, 417 U.S. 817 (1974); Meachum v. Fano, 427 U.S. 215 (1976); Cruz v. Beto, 405 U.S. 319 (1972).

The common thread which runs through the rulings cited and discussed above is that corrections is a highly specialized profession, and even the U.S. Supreme Court will not intrude into the corrections area unless it finds a clear violation of the constitutional rights of inmates. For example,

even where the most fundamental right as freedom from unreasonable search and seizure is involved, the Court will permit even a highly intrusive search so long as there is justification based on the corrections professional's judgment of the need for security and order in the institution.

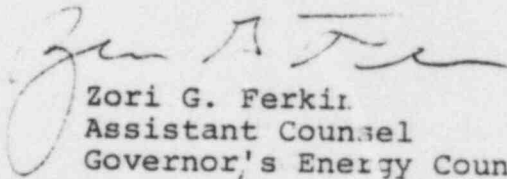
While the officials of the Pennsylvania Bureau of Correction do not claim to be experts in the development of evacuation plans relating to nuclear incidents, the Bureau in fact has more experience in this particular area than any one organization or individual. The Bureau has of necessity had to plan for the evacuation of its State Correctional Institution at Camp Hill in response to the Three Mile Island nuclear incident. The Bureau has received a great deal of advice and assistance in its evacuation plan development from the Pennsylvania Emergency Management Agency (PEMA), clearly an expert organization in the emergency planning and evacuation response arena. Only with the knowledge and experience of the entire correctional system in the Commonwealth of Pennsylvania, knowing exactly what resources are available at each correctional institution and having experience with the particular physical plants, as well as institutional personnel, is it possible to develop a workable evacuation plan. As stated in the Affidavit of Commissioner Jeffes previously provided this Board, only individuals inside the Pennsylvania Bureau of Correction have this expertise. Review of the plan by someone outside the Bureau would thus be futile. Jeffes Affidavit at 5. Consistent with the rulings of the U.S.

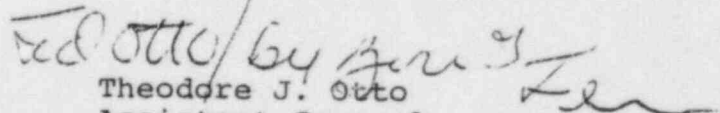
Supreme Court with regard to the opinions and policies of corrections officials, this Board should defer to the policy of the Pennsylvania Bureau of Correction and the opinion of Commissioner Jeffes with regard to the need for the strictest security and protection of the Graterford plan.

III. Conclusion

For the foregoing reasons and the arguments set forth in the Commonwealth's Request for Non-Disclosure dated December 13 and Response to the Graterford Inmates' Motion dated December 30, 1984, the Commonwealth respectfully requests this Board to deny the motion of the Graterford inmates for full disclosure of the Graterford radiological emergency response plan. The Commonwealth requests that there be no further disclosure of said plan to either inmates or their counsel.

Respectfully submitted,


Zori G. Ferkin
Assistant Counsel
Governor's Energy Council


Theodore J. Otto
Assistant Counsel
Bureau of Correction

Dated; January 18, 1985

II

10



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S ENERGY COUNCIL

P.O. BOX 8010
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December 13, 1984

OFFICE OF
POLICY & PLANNING
783-0220

852742

Angus R. Love, Esq.
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Re: Limerick Nuclear Generating Station, Docket Nos.
50-352, 50-353

Dear Mr. Love:

In accordance with the Licensing Board's Orders dated April 20 and August 15, 1984 in the above-captioned proceeding, the Commonwealth hereby transmits to you a copy of the Pennsylvania Bureau of Correction, Radiological Emergency Response Plan, Appendix E, Annex 1 prepared for the response by the State Correctional Institution at Graterford to incidents at the Limerick Generating Station.

Certain information has been deleted from this copy of the Graterford plan for security reasons. Please note the attached request for nondisclosure of confidential information and attached affidavits.

If you have any questions regarding the information provided here, please don't hesitate to call.

Very truly yours,

Zori G. Ferkin
Assistant Counsel
(717-783-0225)

ZGF:ww

Attachments

Enclosure

cc w/o enclosure: Service List
Theodore G. Otto, Esq.

FOIA-85-304

A1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Philadelphia Electric Company	)	Docket Nos. 50-352
(Limerick Generating Station,	)	50-353
Units 1 and 2))	

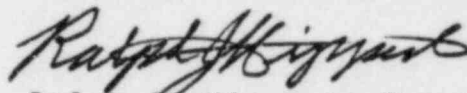
AFFIDAVIT OF RALPH J. HIPPERT

I, Ralph Hippert, being duly sworn, state as follows:

1. At present I am the Deputy Director, Office of Plans and Preparedness, Pennsylvania Emergency Management Agency.

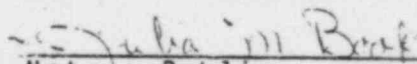
2. I have read the Pennsylvania Bureau of Correction, Radiological Emergency Response Plan, Annex 1, Appendix E dated October 26, 1984, including the Request to withhold portions of the foregoing Plan from public disclosure.

3. I hereby certify that the statements and matters set forth therein are true and correct to the best of my knowledge.



Ralph J. Hippert, Deputy Director
Office of Plans and Preparedness
Pennsylvania Emergency Management
Agency

Subscribed and Sworn to before me
this 13th day of December 1984


Notary Public

JULIA M. BOOK, NOTARY PUBLIC
My Commission Expires July 13, 1987

My commission expires: Harrisburg, PA Dauphin County