UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :

PHILADELPHIA ELECTRIC COMPANY :

Limerick Generating Stations
Units 1 and 2 : NOS. 50-352 and 50-353

PETITION FOR REVIEW

I. DECISION UPON WHICH REVIEW IS SOUGHT

The Graterford inmates, intervenors in the above-captioned matter, seek the review of the Nuclear Regulatory Commission of a Memorandum and Order filed on February 5, 1985 by the Atomic Safety and Licensing Board. This Order is entitled, Memorandum and Order Regarding Graterford Prisoners. The Order denied the Motion of the Graterford inmates for full disclosure of the Graterford evacuation plan. Said inmates had requested a review of the entire evacuation plan for Graterford, had specified an expert in the field of corrections, and had requested that said review be conducted under a protective order of the court. The Licensing Board denied any further disclosure beyond the "sanitized" version of the plan, which had already been made available to the inmates.

The inmates appealed this decision to the Atomic Safety and Licensing Appeal Board on February 8, 1985. On February 12,

1985, the Appeal Board in a Memorandum and Order denied the inmates' appeal. This Petition for Review is brought pursuant to 10 C.F.R. 2.786.

II. BACKGROUND INFORMATION

On September 18, 1981, the inmates for the State Correctional Institute at Graterford filed a petition to intervene in the Limerick Licensing proceedings. On June 1, 1982, in a Special Prehearing Conference Order, the Atomic Safety and Licensing Board admitted the Graterford prisoners as a party to this proceeding. See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2) LBP-82-43(a), 15 NRC 1423, 1446 through 1447 (1982). On April 20, 1984, in a Special Prehearing Conference Order, the Board granted the Graterford inmates twenty days after the receipt of the evacuation plan for Graterford, to submit specific contentions. Through no fault of the inmates, the completion of the evacuation plan was significantly delayed. On December 13, 1984 the Commonwealth sent to the prisoners an unclassified ("sanitized") copy of the Pennsylvania Bureau of Corrections, Radiological Emergency Response Plan for Graterford (see Exhibit A). On December 19, 1984, the Graterford inmates moved for an Order requiring full disclosure by Pennsylvania of the Graterford plan. They further moved that the submission of contentions be measured from the receipt of the uncensored plan. Their request for the uncensored version of the plan was denied on

January 29, 1985 by the Licensing Board. Also denied was the inmates' request for a stay of their twenty day time frame in which to file contentions based upon the expurgated copy of the plan. (TR. 20,842). The inmates appealed said decision to the Atomic Safety and Licensing Appeal Board. Said appeal was dismissed by way of Memorandum and Order dated February 12, 1985 by the Appeal Board. Thus, the inmates respectfully request that the Nuclear Regulatory Commission review these two previous Orders based upon the following arguments.

III. THE GRATERFORD INMATES REQUEST THE REVIEW OF THE NUCLEAR REGULATORY COMMISSION FOR THE FOLLOWING REASONS:

A. The Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Panel based their decisions upon an erroneous legal standard, 10 C.F.R. 2.790(a).

B. The rulings of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Panel threatens the Graterford prisoners (intervenors) with immediate and serious irreparable impact, which as a practical matter, could not be alleviated by a later appeal, thus affecting the basic structure of the proceedings in a pervasive manner.

IV. ARGUMENT

A. The Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Panel based their decisions upon an

erroneous legal standard, 10 C.F.R. 2.790(a).

The Graterford inmates are appealing the denial of their Motion for Full Disclosure of the evacuation plan for the State Correctional Institute at Graterford. While this matter is still pending before the Atomic Safety and Licensing Board, the inmates move to have the Nuclear Regulatory Commission to review this interlocutory appeal. In order to allow for the review of such an interlocutory appeal, our courts have indicated that a ruling must meet a twofold test in order that it can be overturned. See Public Service Company of Indiana, (Marble Hill Nuclear Generating Station, Units 1 and 2) ALAB-405; 5 NRC 1190, 1192 (1977). Briefly stated, this standard indicates that such an appeal must not only be based upon a legally erroneous standard, but also must affect the basic 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. This section will deal with the first portion of that test and the following section will deal with the second portion of this test.

With regard to the contention that the Panel and the Appeal Board utilized a legally erroneous standard, the inmates draw the attention of the NRC to 10 C.F.R. §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. This test should weigh the interests of the "person...urging non-disclosure and the public interest in disclosure". 10 C.F.R. 2.790(a) and Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) 5 NRC 1398 (1977) In that particular case, the issue involved the release of the site security plans to interested intervenors. Said court ruled that the applicants' request for non-disclosure 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 this case deals with evacuation plans of a prison and not the site security plans of a nuclear facility, it is a case of first impression and thus the inmates contend by analogy that standards utilized for site security plans are adequate in order to formulate a legal standard for their request for full disclosure of the Bureau of Corrections evacuation plan. The Atomic Safety and Licensing Board, in denying the inmates access to the unsanitized version of the evacuation plan cited erroneously the standard mentioned in 10 C.F.R. 2.790(a). In their Memorandum and Order regarding Graterford Prison, dated February 5, 1985 (ASLBP No. 81-465-07 0L), they note on number 3 that this is a case of first impression. In paragraph number 4 they indicate "The need to protect the general public far outweighs the needs of the Graterford prisoners to have present access to full details of an evacuation plan which

is to be implemented only in the event of a nuclear accident were it to occur at Limerick." The prisoners contend that the Board's interpretation of 10 C.F.R. 2.790(a) is incorrect in that it balances the interests of the general public against the interests of the Graterford prisoners in deterring their request to full access of the evacuation plan. The inmates contend that the appropriate legal standard would be to weigh the interests of the individual urging non-disclosure, i.e. Pennsylvania Emergency Management Agency or their subordinate, the Pennsylvania Bureau of Corrections vs. the public interest in disclosure, that being the Graterford inmates designated intervenors' request for the disclosure of the additional details in the evacuation plan. 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.

Furthermore, the Board accepted as a basis for not allowing the plan to be reviewed under a protective order, an affidavit signed by Bureau of Corrections Commissioner Glen Jeffes, which was attached to the sanitized version of the evacuation plan. Mr. Jeffes' affidavit reads in paragraph 23, "There have been occurrences where attorneys have, or have been suspected of, divulging to inmates material almost as sensitive as this plan. Thus, there is a reasonable suspicion that, even though we 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." The Board in paragraph 5 of their ruling, insists that any contention based upon detailed information contained in the plans would, of necessity, violate even the most rigidly drawn protective order. The Board further states that it does not hold to the belief that an attorney would overtly disclose the plans, but to discuss any matter, underline any matter, with the prisoners in framing a contention might lead to an inadvertent disclosure which would compromise the integrity of the plan. The inmates contend that the court has once again used an erroneous legal standard upon which to make their decision. Under the commission's rules of practice, parties may obtain discovery of any matter relevant to the proceedings, but not privileged. See 10 C.F.R. §2.740(b)1. The inmates in support of their request for full disclosure cite the Atomic Safety and Licensing Appeal Board's decision in this matter, dated February 12, 1985, on page 3, which states:

> "Because disputes often arise concerning matters of a discoverable, yet sensitive nature, protective orders are the favored means of handling such problems. See 10 C.F.R. §2.740(c). Protective orders can be drafted to limit the time and place of access to the sensitive information, as well as the invididuals who may see it. See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1

and 2) ALAB-600, 12 NRC 3, 14 through 17 (1980); Consumers Power Company, (Midland Plant, Units 1 and 2), LBP-83-5318 NRC 281, 289 through 291, (1983), affirmed ALAB-764, 19 NRC 633 (1984). Lastly, we have stated on more than on occasion (sic), that we assume protective orders will be obeyed, unless good cause is demonstrated as underlined by appropriate affidavits that the individual subject to a potential protective order will not abide by it. Commonwealth Edison Company. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 25 through 26 (1983)."

The inmates contend that there has yet to be a showing of untrustworthiness of any individual who may be subject to such a protective order as was contemplated in the prior reading. Thus, the Licensing Board has based its decision once again on an inappropriate legal standard.

Finally, the inmates would like to direct the court's attention to the rationale that was utilized by the Licensing Board in their decision making process. Referring to paragraph 3 of the Board's decision, "We, therefore, adopt what the Supreme Court said in Bell vs. Wolfish, 441 U.S. 520 (1979). We defer to those prison administrators who are responsible for maintaining internal order and discipline. The case that the Board uses to justify its decision was brought by inmates as a class action in the United States District Court, challenging the conditions of

confinement and practices in the Metropolitan Correctional Center, a federally operated, short term custodial facility in New York City, designed primarily to house pre-trial detainees. The issues that the District Court ruled upon included the practice of housing, the practice of double-bunking, enforcement of the so-called publishers only rule, prohibiting inmates from receiving hard covered books, the prohibition against inmates receipt of packages of food and personal items from outside the institution, the practice of body cavity searches of inmates following contact visits, and the requirement that pre-trial detainees remain outside the rooms during routine inspections by MCC officials. See Bell vs. Wolfish, 47 LW 4507 (May 14, 1979). The inmates contend that the Pacific Gas and Electric case, supra, which involves the site security plans of a nuclear facility and an intervenor's request for disclosure of such under a protective order, is a better guideline for this court to follow than the one suggested by the Board, i.e. Bell vs. Wolfish, supra. For these reasons, the inmates contend that they have satisfied the initial test regarding an illegal erroneous standard being utilized in the decision making process.

B. The rulings of the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Panel threatens the Graterford prisoners (intervenors) with immediate and serious irreparable impact, which as a practical matter, could not be

alleviated by a later appeal, thus affecting the basis structure of the proceedings in a pervasive manner.

In order for an interlocutory appeal to be heard, the inmates must satisfy the second portion of the test cited in Pacific Gas and Electric, supra. This test involves the intervenors' ability to go forward despite this ruling and to form valid contentions in the licensing process. The inmates contend the denial of access to the unsanitized version of the plan causes an immediate and serious irreparable impact upon their ability to form such contentions. Initially, the inmates contend the unsanitized version of the plan is so overly censored that it is virtually incomprehensible, and thus it is 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 contentions based upon such limited information. Inmates further contend that their retention of Major John Case, currently field director for the Pennsylvania Prison Society, past warden of the Bucks County Prison for fifteen years, and a member of the United States Marine Corps for twenty-one years,

should have been sufficient to alleviate the fears of the persons requesting non-disclosure. Major Case, while in the United States Marine Corps received a top secret Q classification entitling him to review matters of national security. Deputy Commissioner Erskine Deramus, testifying before the Licensing Board, indicated that he had known Major Case for over fifteen years and considered him to be a trustworthy individual. He further testified that he would have no problem with Major Case reviewing the plans under the protective order of the court. Thus, the persons wishing to keep the plan classified presented witnesses that agreed with the inmates' contention that a review by their expert under a protective order would be confidential with no fear of disclosure to said inmates.

Furthermore, Judge Hoyt, of the Licensing Board, 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 (deleted) patients."

Deputy Commissioner Deramus testified that all information that was deleted from the plan was confidential and not available in the public domain. The inmates contend that the censorship is so broad that it includes information already within the public domain. They offer a copy of the December, 1984, January 1985

edition of Graterfriends, a publication of community and inmate volunteers which is circulated within the Graterford community as proof of this claim. See Exhibit B attached. Page 10 of Graterfriends 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 twenty-five 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 plan itself. As further evidence of this incomprehensible nature the inmates also draw the court's attention to page E-1-A-1 (Appendix E, Annex 1, Attachment A, page 1) general concept of evacuation. A review of the general concept of evacuation gives the intervenors virtually no idea as to what that concept is, whether it will adequately protect the safety of the inmates and staff, or whether it will assure a safe and secure evacuation from the facility.

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 note that they have submitted contentions based upon the sanitized version, however, they have reserved the right to file additional contentions based upon the entire plan if this appeal is successful. Furthermore, the contentions that were filed are based primarily upon their fears

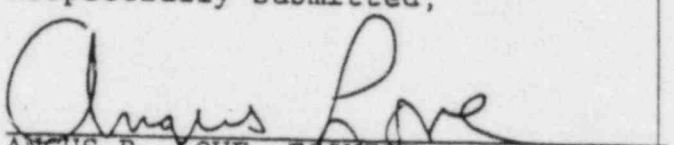
that a safe and secure evacuation has not been properly planned and not upon the limited information available in the sanitized version of the evacuation plan.

Finally, upon request of Chairman Hoyt at the urging of the NRC staff, the inmates approached their expert, Major Case, and asked what additional information in the plan he would require in order to make a valid judgment regarding the viability of such. Major Case responded that the entire plan was necessary in order to determine the viability of such. His response was predicated upon a review of the sanitized version of which he found little or no information available upon which to make his determination. The inmates' counsel, in response to the same question from Judge Hoyt, listed several specific concerns, including the number of buses necessary to conduct an evaluation, their availability, the routes to be taken to and from the institution, the security equipment necessary, the weapons necessary to provide safe passage, and the destination to which the inmates would be relocated. Chairman Hoyt, however, rejected both the opinion of Major Case and the additional data of the inmates' attorney and stated in her opinion that the inmates have refused to provide any further information necessary for her to make a decision.

V. CONCLUSION

Wherefore it is the inmates' request that this Honorable Commission allow the interlocutory appeal due to the fact that the inmates have met both tests of the Pacific Gas and Electric case, supra, i.e. that the Licensing Board decision was based on an erroneous legal standard and that the unavailability of the unsanitized plan, even under protective 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 for the State Correctional Institute at Graterford. Thus, they request that this Commission utilize its powers as outlined in 10 C.F.R. §2.786 and grant the within Petition for Review and to issue an Order accordingly.

Respectfully Submitted,



ANGUS R. LOVE, ESQUIRE
Montgomery County Legal Aid
Attorney for Inmates

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :

PHILADELPHIA ELECTRIC COMPANY :

Limerick Generating Stations
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 Petition for Review, in reference to the above-captioned matter, was mailed first class, postage prepaid, on February 21, 1985, to the following list:

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

Administrative Judge Jerry Harbour
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Richard F. Cole
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ann P. Hodgdon, Esquire
Counsel for NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Martha W. Bush, Esquire
Municipal Services Building
15th & JFK Blvd.
Philadelphia, PA 19107

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

Robert J. Sugarman, Esquire
Sugarman, Denworth & Hellegers
16th Floor, Center Plaza
101 North Broad Street
Philadelphia, PA 19107

Docket & Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 (3 copies)

Mr. Robert L. Anthony
103 Vernon Lane, Box 186
Moylan, PA 19065

David Wersan, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

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

Mr. Frank R. Romano
61 Forest Avenue
Ambler, PA 19002

Zori G. Ferkin, Esquire
Governors' Energy Council
P.O. Box 8010
1625 N. Front Street
Harrisburg, PA 17105

Mr. Thomas Gerusky, Director
Bureau of Radiation Protection
Dept. of Environmental Resources
Fulton Bank Building, 5th Floor
Third & Locust Streets
Harrisburg, PA 17120

Spence W. Perry, Esquire
Associate General Counsel
FEMA, Room 840
500 CT Street, SW
Washington, D.C. 20472

James Wiggins
Senior Resident Inspector
U.S. Nuclear Regulatory Commission
P.O. Box 47
Sanatoga, PA 19464

Timothy R.S. Campbell, Director
Dept. of Emergency Services
14 East Biddle Street
West Chester, PA 19380

Director
Pennsylvania Emergency Management Agency
Basement, Transportation & Safety Bldg.
Harrisburg, PA 17120

Troy B. Conner, Jr., Esquire
Conner & Wetterhahn
1747 Pennsylvania Ave., NW Suite 1050
Washington, D.C. 20006

Jay M. Gutierrez, Esquire
U.S. Nuclear Regulatory Commission
Region 1
631 Park Avenue
King of Prussia, PA 19406

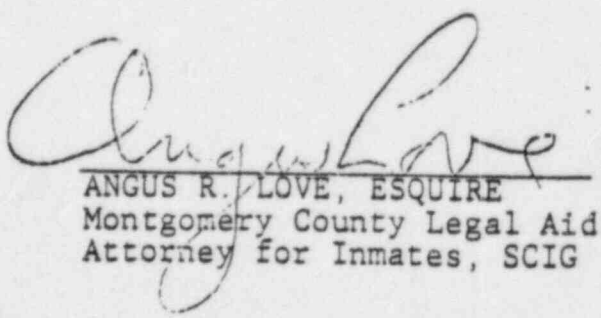
Phyllis Zitzer
Limerick Ecology Action
P.O. Box 761
762 Queen Street
Pottstown, PA 19464

Charles W. Elliott, Esquire
Counsel for Limerick Ecology Action
325 N. 10th Street
Easton, PA 18042

Eugene J. Bradley, Esquire
Counsel for Philadelphia Electric
2301 Market Street
Philadelphia, PA 19101

Edward G. Bauer, Jr.
V.P. and General Counsel
Philadelphia Electric Co.
2301 Market Street
Philadelphia, PA 19101

Steven P. Hershey, Esq.
Community Legal Services, Inc.
5219 Chestnut Street
Philadelphia, PA 19139



ANGUS R. LOVE, ESQUIRE
Montgomery County Legal Aid
Attorney for Inmates, SCIG