

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

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.

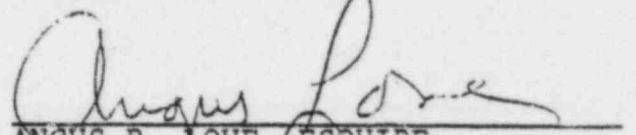
Furthermore, Judge Hoyt commenting on the sanitized version admitted that certain portions were unreadable. As evidence of the overly broad nature of the censorship of this plan the intervenor inmates referred to page E-1-7 which states under Section G, "The SCIG infirmary has a capacity for (blank) 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

15

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

85 FEB 26 10:26

BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairperson

Dr. Richard F. Cole

Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

854639

SERVED FEB 26 1985

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

Docket Nos. 50-352-OL
50-353-OL

ASLBP No. 81-465-07 OL

February 25, 1985

ORDER

(Denying Graterford Inmates' Request for Extension
for Reply to Applicant's Motion for Exemption
from Requirements of 10 C.F.R. 50.47(a) and (b))

1. By letter to this Board dated February 15, 1985, counsel for Inmates of the State Correctional Institute at Graterford requests an extension of time to reply to "Applicant's Motion for Exemption from the Requirements of 10 C.F.R. 50.47(a) and (b) as They Relate to the Necessity of Atomic Safety and Licensing Board Consideration of Evacuation Provisions of the Emergency Plan for the State Correctional Institution of Graterford" filed February 7, 1985.

2. By Board Order of February 8, 1985, the due date for replies to Applicant's Motion was extended for all parties to March 18, 1985. This is well beyond the time frame counsel for the inmates must meet for other pleadings in this proceeding.

FOIA-85-304

8502260542

A-15

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

Docket No.(s) 50-352-OL
50-353-OL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

26th day of Feb 1985.

Peggy H. Dawkins
Office of the Secretary of the Commission

#1 LB's Order (Denying Grateford Guarantees'
Request for Extension for Reply to
Applicant's Motion for Exemption...) dtd
2/25/85

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

Docket No.(s) 50-352
50-353

SERVICE LIST

Helen F. Hoyt, Esq., Chairman
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 Commission
Washington, D.C. 20555

Christine N. Kohl, Esq., Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gary J. Edles
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Reginald Gotchy
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Troy B. Conner, Jr., Esq.
Conner & Wetterhahn
1747 Pennsylvania Avenue, N.W.
Suite 1050
Washington, D.C. 20006

Philadelphia Electric Company
ATTN: Edward G. Bauer, Jr.
Vice President & Gen. Counsel
2301 Market Street
Philadelphia, Pennsylvania 19101

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

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, Pennsylvania 19149

Phyllis Zitzer
Limerick Ecology Action
P.O. Box 761
Pottstown, Pennsylvania 19464

Charles W. Elliott, Esq.
325 North Tenth Street
Easton, Pennsylvania 18042

Zori G. Ferkin
Governor's Energy Council
P.O. Box 8010
Harrisburg, Pennsylvania 17105

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

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

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

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

Joseph H. White, III
15 Ardmore Avenue
Ardmore, Pennsylvania 19003

Thomas H. Ramsay, Esq.
40 Darby Road
Paoli, Pennsylvania 19301

David Wersan, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Steven P. Hershey, Esq.
Community Legal Services, Inc.
Law Center West
5219 Chestnut Street
Philadelphia, Pennsylvania 19139

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
Municipal Services Building
15th & JFK Boulevard, Room 1530
Philadelphia, Pennsylvania 19107

Angus Love, Esq.
107 East Main Street
Norristown, Pennsylvania 19401

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
500 C Street, S.W., Room 840
Washington, D.C. 20472

Mark L. Goodwin, Esq.
Pennsylvania Emergency Management Agency
B-151 Transportation & Safety Building
Commonwealth Avenue
Harrisburg, Pennsylvania 17105