

DOCKETED
USNRC

*85 SEP 25 A9:55

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-352,
50-353

8509260350 850923
PDR ADOCK 05000352
G PDR

DSO3

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE	2
III. STATEMENT OF THE ISSUES ON APPEAL THAT THE COMMONWEALTH WILL ADDRESS	3
IV. ARGUMENT	3
A. The Licensing Board Properly Denied The Proposed Revised Contentions of the Graterford Inmates	3
1. Background	3
2. Manpower Mobilization	4
3. Input of the Correctional Officers	6
4. Medical Services	7
5. Simulated Evacuation Plan Exercise	9
6. Panic Factor	12
B. There Is Reasonable Assurance That Training Will Be Offered To Civilian Personnel Who Will Aid In Implementation Of The Graterford RERP	13
1. Background	13
2. Scope of the Contention	13
3. Training Will Be Made Available	14
C. There Is Reasonable Assurance That The Methodology Used To Develop The Estimated Time Of Evacuation For The Graterford Prison Is Reliable	16

	<u>Page</u>
1. Background	16
2. The ETE Presented by Superintendent Zimmerman Is Reliable	17
3. The ETE Appropriately Considers Transportation and Manpower Mobilization . .	18
4. Plans Are In Place to Ensure Inmate Cooperation In a Radiological Emergency . .	22
V. CONCLUSION	24

TABLE OF CITATIONS

CASES

	<u>Page</u>
<u>Union of Concerned Scientists v. U.S. Nuclear</u> <u>Regulatory Commission</u> , 735 F.2d 1437 (D.C. Cir. 1984), <u>cert. denied</u> , 105 S. Ct. 815 (1985)	10

NUCLEAR REGULATORY COMMISSION ISSUANCES

<u>Cincinnati Gas & Electric Company</u> (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8 (1976)	8
<u>Gulf States Utilities Company</u> (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, (1974)	8
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC	6, 9, 12, 14, 23
(August 8, 1985)	
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219 (1985)	
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), LBP-84-31,20 NRC 446 (1984)	5, 9
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), Fourth Partial Initial Decision (Unpublished), July 22, 1985	<u>passim</u>
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others (Unpublished), June 12, 1985	<u>passim</u>
<u>Southern California Edison Company</u> (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528 (1983)	9

REGULATIONS

	<u>Page</u>
10 C.F.R. 2.714	7, 8, 11
10 C.F.R. 2.714(b)	6
10 C.F.R. 2.715	1
10 C.F.R. 2.732	8
10 C.F.R. 2.743(c)	7
10 C.F.R. 2.758(a)	20
10 C.F.R. 2.758(b)	20
10 C.F.R. Part 50, Appendix E	2, 23
10 C.F.R. Part 50, Appendix E, Section IV. F.4	11
10 C.F.R. 50.47(b)	4
10 C.F.R. 50.47(b)(14)	11
10 C.F.R. 50.47 (b)(15)	16
10 C.F.R. 50.47	2
Final Rule, Emergency Planning and Preparedness 50 Fed. Reg. 19,323 (May 8, 1985) (to be codified at 10 C.F.R. 50.47(a)(2))	10

MISCELLANEOUS

Affidavit of Roger E. Linneman, M.D. (April 4, 1985)	9
Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG-0654 (November 1980)	<u>passim</u>
Memorandum from Richard W. Krimm, FEMA to Edward L. Jordan, NRC (March 27, 1985)	11
Nuclear Regulatory Commission "Statement of Policy on Emergency Planning Standard 10 C.F.R. 50.47(b)(12)," 50 Fed. Reg. 20,892 (May 21, 1985)	9

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

DOCKETED
USNRC

85 SEP 25 1985 19:59

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

**BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA IN RESPONSE
TO THE APPEALS OF THE GRATERFORD INMATES AND AIR AND
WATER POLLUTION PATROL RELATING TO THE FOURTH PARTIAL
INITIAL DECISION OF JULY 22, 1985 AND THE ORDER OF
JUNE 12, 1985 ADMITTING AND DENYING CERTAIN CONTENTIONS**

I. INTRODUCTION

This matter is before the Atomic Safety and Licensing Appeal Board (Appeal Board) on the separate appeals of the Graterford inmates and Air and Water Pollution Patrol (AWPP) from the Atomic Safety and Licensing Board's (Licensing Board) Fourth Partial Initial Decision, of July 22, 1985 (unpublished). The Fourth Partial Initial Decision addresses offsite emergency planning contentions relating to the Radiological Emergency Response Plan (RERP) for the State Correctional Institution at Graterford, Pennsylvania.

The Commonwealth of Pennsylvania (Commonwealth) is an interested governmental participant in this proceeding pursuant to 10 C.F.R. 2.715. The Commonwealth Department of Corrections, with the advice and assistance of the Pennsylvania Emergency Management Agency (PEMA), developed the RERP for the Graterford institution. In keeping with its interests with respect to the

Graterford RERP, the Commonwealth responds herein to certain issues raised in the pending appeals.

II. STATEMENT OF THE CASE

On May 13, 1985, the Graterford inmates filed Proposed Revised Contentions with regard to the Graterford Radiological Emergency Response Plan (RERP). In an unpublished Order of June 12, 1985, the Licensing Board admitted two of the inmates' revised contentions. These concerned the offering of training to non-state employees who have a role in the execution of the Graterford RERP, and the sufficiency of the methodology used to develop an evacuation time estimate (ETE) for the institution. The Board rejected six other contentions raised by the Graterford inmates for lack of specificity and basis.

Hearings on the admitted contentions were held from July 15, 1985 through July 17, 1985. On July 22, 1985, the Atomic Safety and Licensing Board issued its Fourth Partial Initial Decision relating to the admitted contentions of the Graterford inmates. With respect to each contention, the Board held that the Graterford RERP meets the requirements of 10 C.F.R. 50.47 and Appendix E to 10 C.F.R. Part 50, as well as the criteria of NUREG-0654, and provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The Graterford inmates have appealed the Licensing Board's Order of June 12, 1985 as to five of the contentions denied therein. The inmates as well as Intervenor Air and Water

Pollution Patrol (AWPP) have appealed the Fourth Partial Initial Decision (Fourth PID). Where AWPP and the inmates raise similar arguments the Commonwealth's response is intended to address both intervenors.

III. STATEMENT OF THE ISSUES ON APPEAL
THAT THE COMMONWEALTH WILL ADDRESS

A. Whether the Licensing Board in its Order of June 12, 1985 properly rejected the proposed contentions of the Graterford inmates.

B. Whether the Licensing Board in its Fourth PID properly found reasonable assurance that training will be offered to civilian personnel who will aid in the implementation of the Graterford plan.

C. Whether the Licensing Board in its Fourth PID properly found reasonable assurance that the evacuation time estimate methodology for the Graterford institution is reliable.

IV. ARGUMENT

A. The Licensing Board Properly Rejected The Proposed Revised Contentions of the Graterford Inmates

1. Background

The proposed revised contentions filed by the inmates in fact consisted of one contention with several bases. The inmates' contention provided:

There is no reasonable assurance that the Radiological Emergency Response Plan for the State Correctional Institute at Graterford will protect the staff and

inmates at said institution in the event of a nuclear emergency at the Limerick Generating Station.

This contention and the bases for it were discussed extensively in prehearing conferences among the various parties and the Board held on February 27, 1985 and March 22, 1985. The Board relied upon information supplied by the Commonwealth and other parties at these conferences in ruling upon these contentions.

In its unpublished Order of June 12, 1985, the Licensing Board rejected six of the eight stated bases for this contention. The inmates appeal the Board's Order with respect to the bases relating to manpower mobilization, input of the correctional officers' union, medical services, simulated evacuation plan exercise and the panic factor.

2. Manpower Mobilization

In their proposed contentions, the inmates challenged the Commonwealth's reliance on the commercial telephone system to mobilize the Graterford institution's off-duty manpower. The inmates also asserted that the lack of a backup for this call-up system was contrary to the provisions of 10 C.F.R. 50.47(b) and NUREG-0654, Criterion E. In support of the contention, the inmates cited the testimony of a township supervisor in earlier emergency planning hearings in this proceeding, to the effect that commercial telephone lines have been unreliable in emergencies.

The Licensing Board rejected this contention. With respect to the views of the township supervisor, the Board referred to its third partial initial decision, where it found that the potential unavailability of commercial telephone lines would not delay activation of necessary EOC personnel for the township. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1387-88 (1985). Further, neither NRC nor FEMA emergency planning requirements or guidance prohibit use of commercial telephone lines. With respect to the requirement for a back-up, the NUREG-0654 provision which calls for a telephone link and alternate does not apply to the Graterford Plan, because the Department of Corrections is a "support" organization under the Commonwealth's Radiological Emergency REsponse Plan, and therefore not responsible for initiating protective actions for any entity or population other than the Graterford institution itself. The Board also noted that Graterford prison has a dedicated telephone connection to the Pennsylvania State Police who could act as a back-up notification method for off-duty personnel. Order of June 12, 1985 at 3-4.

In addition to the reasons cited by the Board, it is clear from the testimony of Commonwealth witness Zimmerman, the Superintendent of Graterford prison, that security personnel who will participate in the Graterford evacuation are already available on-site and can begin evacuation preparations. It is therefore not necessary that all additional off-duty personnel be

contacted immediately. Zimmerman, fol. Tr. 20,763 at 5; Tr. 20,809, 20,840. And, as the Commission itself noted, the Graterford RERP provides that guards can be dispatched to Graterford from other institutions in the event off-duty guards for some reason cannot be mobilized. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), CLI-85-15, 22 NRC —, — (August 8, 1985) (slip opinion at 4). For all these reasons, the Board correctly found this contention lacked the basis and specificity required by 10 C.F.R. 2.714(b).

3. Input of the Correctional Officers

The inmates contended that there is no reasonable assurance that the correctional officers union is aware of the role of the Department of Corrections in a Limerick emergency. The Board rejected this contention. The Board found nothing in NRC regulation or NUREG-0654 which required union input into emergency planning. The union is not designated as an emergency response organization by NUREG-0654. In addition, the Board noted that the correctional officers are obligated by virtue of their employment with the Department of Corrections to perform their assigned duties, whether or not their union is aware of the concept of the plan. Order of June 12, 1985 at 4-5.

On brief the inmates present two arguments. The inmates argue that the guards must be allowed input into the development of the Graterford plan because they are integral to its implementation. The inmates assert that the guards, as plan participants, should be adequately informed of the risks of plan operation. In addition, the inmates note that union

representatives from transportation and teacher organizations were permitted to testify in the offsite emergency planning hearings in this proceeding. Inmates' Brief at 14-16.

The inmates' appeal appears to seek litigation of a wholly new matter regarding the Graterford guards' union. Whether or not the guards at the Graterford institution are "informed" of their duties in a radiological emergency is a different issue from the question of whether their union is required to be afforded input into the development of the Graterford RERP. As explained earlier, the Board correctly found no basis for requiring the guards' union to be a party to the development of plan. If the true concern of the inmates in proposing this contention was the degree of preparedness of the guards to participate in a prison evacuation, then it was incumbent upon them to offer a basis for that concern. The inmates failed to provide such a basis. The fact that union representatives have testified previously in these hearings, is not a basis for litigating a contention. The admissibility of testimony is adjudged according to the standards for evidence found in 10 C.F.R. 2.743(c), not those for admission of contentions under 10 C.F.R. 2.714.

4. Medical Services

The inmates alleged that there is no reasonable assurance 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. The Board

rejected this contention for lack of basis and specificity.
Order of June 12, 1985 at 6-8.

The inmates argue on brief that the Licensing Board applied an improper standard in denying this contention. The inmates assert the Board shifted the "burden...to prove the inadequacy of the medical facilities" from the applicant to the inmates. Inmates' Brief at 16-17.

The inmates confuse the regulatory requirement found in 10 C.F.R. 2.732 that applicant carry the burden of proof in licensing proceedings, with the responsibility an intervenor bears under 10 C.F.R. 2.714 with respect to its proposed contentions. 10 C.F.R. 2.714 requires that an intervenor plead its contentions with basis and specificity, and that the contentions place the Board and other parties on notice as to the matters that must be addressed in the ensuing litigation. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8,12 (1976); Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974).

On review of the inmates' proposed basis for this contention, it is clear that it lacked the requisite specificity to be admitted for litigation. Using the example cited by the inmates in their brief, the inmates claimed that the capacity of Montgomery Hospital to provide medical services had not been ascertained. The contention failed to state what capacity the inmates believed the hospital should have. Because there is no NRC requirement that any one hospital be able to treat a

specific number of contaminated injured persons, (see Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 532, 535 n.10 (1983)) the Board said it was "left in the dark as to what capacity it is that the inmates have in mind." Order of June 12, 1985 at 7. More generally, the inmates failed to specify deficiencies in medical service planning for Graterford despite the extensive information developed in previous onsite emergency planning hearings and in the prehearing conferences which were specific to plans for Graterford. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC 446, 531-36 (1984); Affidavit of Roger E. Linnemann, M.D. (April 4, 1985); Response of the Commonwealth, Department of Corrections to Requests for Information (March 15, 1985) at 5, Exhs. "F", "G". See also Nuclear Regulatory Commission Statement of Policy on Emergency Planning Standard 10 C.F.R. 50.47(b)(12), 50 Fed. Reg. 20, 892 (May 21, 1985). The Board found that the inmates had not specifically articulated the matter they wished to litigate, not that the inmates had to prove at the pleading stage that the medical facilities were inadequate. The contention was dismissed under the proper standard and with a sufficient explanation by the Board of its finding that the contention lacked basis. Limerick, supra, CLI-85-15, 22 NRC at ___ (slip opinion at 5).

5. Simulated Evacuation Plan Exercise

The inmates questioned the sufficiency of the March 7, 1985 "table-top" exercise of the Graterford RERP with respect to the

provisions of NUREG-0654, Criterion N. That provision, the inmates argued, required an expansive scenario for such an exercise, including such events as "simulated casualties, offsite fire department assistance, rescue of personnel (and) deployment of radiological monitoring teams...."

The Board rejected this contention because (1) it lacked regulatory basis, (2) failed to specify any deficiency in the scenarios used in the tabletop exercise or justify any requirement for inclusion of possible scenarios from NUREG-0654, and (3) the inmates did not identify any reason they believed FEMA's confirmation of the validity of the tabletop exercise was invalid or faulty. Order of June 12, 1985 at 11. The Board noted the tabletop exercise in question was only a remedial exercise to correct deficiencies previously found by FEMA, and that FEMA approved it in that context. Id.

On brief, the inmates contest the Board's rejection of this contention on two grounds. The inmates contend that NUREG-0654, Criterion N.3.e. requires that the Graterford exercise have included the sorts of scenarios described in its contention. The inmates also argue that the Board failed to consider recently promulgated NRC regulations which implement the holding in Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984). See Final Rule, Emergency Planning and Preparedness, 50 Fed. Reg. 19,323 (May 8, 1985). (to be codified at 10 C.F.R. 50.47(a)(2))

Criterion N.3, NUREG-0654, sets forth guidelines for development of scenarios for exercises and drills. The inmates refer to the listing in N.3.e as the guidepost for a scenario,

yet fail to specify any deficiency in the scenario used in the March 7 remedial exercise, or what additional aspects should have been included. NRC emergency planning regulations in section 50.47(b)(14) state that periodic exercises are required "to evaluate major portions of emergency response capabilities, "not every possible detail of organizational preparedness. In the case of a "remedial" exercise, the Commission states that remedial exercises be "sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises." 10 C.F.R. Part 50, Appendix E, Section IV.F.4. FEMA found that the March 7 exercise reflected that such measures had in fact been taken. See Memorandum from Richard W. Krimm, FEMA to Edward L. Jordan, NRC (March 27, 1985).

Further, the Licensing Board did not violate the holding in the District of Columbia Circuit Court of Appeals' decision in the UCS case. The UCS decision merely affords intervenors an opportunity to raise contentions relating to the conduct of emergency exercises prior to licensing. The decision did not affect the fact that the litigability of any such proposed contentions must be adjudged according to the Commission's criteria under 10 C.F.R. 2.714. The inmates had such opportunity in this proceeding , but did not raise specific claims regarding the March remedial Graterford exercise. In addition, the inmates have not articulated on appeal which "findings of FEMA" they wish to rebut. See Inmates' Brief at 18-19.

6. Panic Factor

The inmates contended that there is no reasonable assurance that the Graterford plan will prevent panic, in the form of a spontaneous evacuation, on the part of either the guards or the inmates. In support of the contention the inmates cited data on the size and composition of the Graterford population, and recited incidents such as work stoppages and power failures which the inmates argued foretold the potential for panic in a Limerick emergency.

The Board rejected this contention. The Board found no basis in the Graterford plan or elsewhere to be concerned that the Department of Corrections could not handle potential disturbances. The Board also noted that the Graterford RERP calls for action by the guards and use of physical restraints to control the inmates, and had been shown no reason by the inmates to assume that the aspects of the Graterford RERP would not be effective. The Board correctly denied this contention. The inmates failed to provide any information that would lead the Board to question the ability of the prison authorities to carry out their legal duties in a radiological emergency. As the Commission had noted, none of the incidents cited showed any indication that the guards deserted or the inmates spontaneously evacuated. Limerick, supra, CLI-85-15, 22 NRC at ____ (slip opinion at 6).

B. There Is Reasonable Assurance That Training Will Be Offered to Civilian Personnel Who Will Aid In the Implementation Of The Plan Graterford RERP.

1. Background

One basis proffered by the inmates asked for assurance that emergency response training be offered to civilian personnel who will be assisting the Department of Corrections in an evacuation of the Graterford institution. Proposed Revised Contentions of the Graterford Inmates (May 13, 1985) at 6. In its Order of June 12, 1985, the Board admitted this contention in substantially the same form as that proposed by the inmates. The contention referred to whether training would be offered to the civilian response personnel. The contention contested the method by which the Commonwealth, through PEMA, put forth its offer, and the comprehensiveness of the training course relative to that offered to school bus drivers in the Limerick EPZ. Order of June 12, 1985 at 5-6, Appendix at 1-2.

2. Scope of the Contention

On brief the inmates attempt to expand the scope of this admitted contention to require some sort of "guarantee" that these civilian drivers will receive radiological emergency response training. See Inmates' Brief at 22. The inmates did not question the wording of this contention when it was admitted for litigation, nor have they attempted to amend it prior to or in the course of the evidentiary hearing. Accordingly, the issue the parties addressed in testimony, and the Board resolved in its decision, was the adequacy of the PEMA offer of training to these personnel. The Board's decision must be read in the context of the language of the admitted contention, not in the

expanded terms the inmates now argue. Cf. Limerick, supra, CLI-85-15, 22 NRC at ____ (slip opinion at 6-7). Further the inmates' allegation that PEMA is "only concerned with the offer" and not with whether the training will occur is both illogical and inconsistent with the record on this issue.

3. Training Will Be Made Available

The Board concluded that there is reasonable assurance that training is and will continue to be offered to these civilian personnel. Fourth PID at 6, 11-12. This finding was based principally on testimony by Mr. Donald F. Taylor, Director of Training and Education for PEMA. PEMA is the agency responsible for coordination of emergency response in the Commonwealth and is concerned in particular with the response planning for state institutions including Graterford. -See Taylor, fol. Tr. 20,856 at 3. Mr. Taylor testified that on April 4, 1985 he contacted by letter the six private bus companies with which the Department of Corrections has arrangements for aid in a radiological emergency. The letter offered training, free of charge to the companies. Taylor fol. Tr. 20,856, at 3-4. Mr Taylor also testified he would personally visit each of the bus and ambulance companies in July and August 1985 to encourage them to take advantage of the training. Taylor, Tr. 20,879-80. The initial training and/or refresher training would be made available annually to the drivers of each bus and ambulance company supporting an evacuation of the Graterford institution. Taylor, fol. Tr. 20,856.

The Board also addressed the question of the likelihood that the training offered would in fact occur. The Board noted that NUREG-0654 requires "reasonable assurance" training will be provided, not a "guarantee." Fourth PID at 9. Inmate witness Case argued financial incentives should be provided to drivers to accept training, but expressed no basis for believing the drivers would not accept training. Id. Indeed, PEMA witness Taylor testified that based on his professional experience the more likely result was that the companies would take advantage of the offer. Taylor, Tr. 20,868. Further, should the companies raise the issue of financial reimbursement, Mr. Taylor indicated he would seek to have the Department of Corrections address the request, in conjunction with the Applicant if appropriate. Taylor, Tr. 20,864. As the Board correctly found, however, there is nothing in NUREG-0654 which requires the provision of financial incentives to personnel receiving training. Fourth PID at 9.

The testimony of FEMA also supports a finding of reasonable assurance that training will be made available. Based upon training given to offsite emergency response personnel at other nuclear power plant sites in Pennsylvania and site-specific information supplied by PEMA concerning Graterford and Limerick, FEMA concluded there is reasonable assurance that emergency response training will be offered to these civilian personnel. Fourth PID at 10. FEMA's conclusion was buttressed by PEMA's stated commitment to contact personally the companies involved to encourage them to opt for the training. Id. at 10-11. FEMA

agreed that NUREG-0654 does not require that financial incentives be instituted to satisfy the planning standard that training be "provided." Id. at 20. See NUREG-0654, Criterion 0 and 10 C.F.R. 50.47(b)(15). The record as established by expert testimony of PEMA and FEMA demonstrates that the inmates' contention with respect to training has been satisfied. Further, the record shows that the Commonwealth through PEMA has and will continue to make all reasonable effort to see that these civilian personnel are informed of the availability of this training and are encouraged to participate.

C. There Is Reasonable Assurance The Methodology Used to Develop the Estimated Time of Evacuation for the Graterford Prison Is Reliable

1. Background

In its Order of June 12, 1985, the Board admitted the portion of the Graterford inmates' contention that questioned the sufficiency of the methodology used to arrive at the estimated time of evacuation for the Graterford institution.

On appeal, the inmates raise three points. They argue that the ETE is unreliable because there have in the past been other evacuation time estimates for the Graterford facilities. Second, the inmates contend that there has not been adequate consideration given with respect to the time needed for mobilization of manpower and vehicles needed to carry out an evacuation. Finally, the inmates raise a concern with respect to the extent of information the inmates will receive in advance of

a Limerick emergency, as such knowledge bears upon inmates' cooperation in the emergency and the delay non-cooperation would have in the "lockdown" component of the ETE. See generally Inmates' Brief at 26. As explained below, the inmates' arguments should be rejected.

2. The ETE Presented by Superintendent Zimmerman Is Reliable.

In the hearing, the Commonwealth presented Superintendent Charles Zimmerman of the State Correctional Institution at Graterford. Superintendent Zimmerman testified to the methodology used to produce an ETE for the institution of eight-to-ten hours. Previously in this proceeding Corrections Commissioner Jeffes had offered six-to-ten hours as an ETE for Graterford. See Zimmerman, fol. Tr. 20,763 at 2. In an attempt to address the inmates' concerns, the Department decided to perform an independent analysis of the components and time needed to evacuate Graterford. Zimmerman, fol. Tr. 20,763 at 2; Fourth PID at 14-15. This analysis resulted in a revised ETE which is consistent with and within the range of the estimate previously developed by Commissioner Jeffes. Zimmerman fol, Tr. 20,763 at 1-2; Tr. 20,768-69; Fourth PID at 14-15. To illustrate the methodology used to determine the evacuation time for Graterford, Superintendent Zimmerman developed a flow chart based upon previous experience with other emergencies and the day-to-day operation of the prison. The flow chart details each step to be taken in evacuating the prison and includes the estimated times necessary to carry out these actions. Fourth PID at 15.

On review of the flow chart and Superintendent Zimmerman's testimony, the Board specifically found the eight-to-ten hour ETE to be based on "reasonable assumptions" regarding evacuation of Graterford. Fourth PID at 15, 24. The Board thus correctly determined that any prior ETE is mooted by the estimate testified to by Superintendent Zimmerman. Id. at 14.

The reasonableness of the ETE presented by Superintendent Zimmerman was confirmed by the testimony of FEMA witness Edward Lieberman. Fourth PID at 22-23. Even the Graterford inmates' own expert witness, Major John D. Case, specifically acknowledged that it is possible to achieve the tasks identified in the revised estimated time of evacuation for the Graterford institution within the eight to ten hour time frame, Case, Tr. 20,930, 20,934-37.

3. The ETE Appropriately Considers Transportation and Manpower Mobilization

Superintendent Zimmerman testified that evacuation vehicles are estimated to arrive at Graterford in two-to-four hours. Zimmerman, fol. Tr. 20,763 at 4. The inmates cite the testimony of their witness, Mr. Robert Morris with respect to postulated road conditions as the basis for the argument that the vehicle arrival time estimate of two-to-four hours is inadequate. Inmates Brief at 28-29.

As Superintendent Zimmerman testified, the two-to-four hour estimate is based on knowledge of regularly traveled routes for Graterford buses and vans when moving from one facility to

another. Fourth PID at 16-17. Further, Superintendent Zimmerman testified that the Graterford plan was coordinated between the Department of Corrections and PEMA, which is the central response agency in the Commonwealth for emergency planning. Zimmerman, Tr. 20,844. The intent in coordinating with PEMA was to ensure that the incoming vehicles for a Graterford evacuation would not be interfered with by outgoing evacuation of the general public. Zimmerman, Tr. 20,803-05. It is wholly reasonable for the Graterford institution in planning for an evacuation to rely upon and coordinate with the plans for general evacuation of the public, plans which are overseen by the Commonwealth's primary emergency response agency.

Moreover, there is nothing in NRC guidance which requires that the Graterford ETE be prepared according to "worst case" road and weather conditions. Dr. Thomas Urbanik, one of the principal authors of Appendix 4 of NUREG-0654, testified for the NRC staff on this issue. Dr. Urbanik explained that NUREG-0654 did not intend evacuation time estimates for special facilities to include a worse case scenario. Urbanik, Tr. 20,976, 20,979-80. The purpose of preparing an ETE as contemplated by NUREG-0654 is to give decision makers data points with which to make decisions regarding appropriate protective actions. Id. Therefore, evacuation time estimates should be representative of realistic conditions, and not attempt to predict exact conditions during an evacuation. Urbanik, Tr. 20, 975-77, 20-979,81.

On appeal, intervenor AWPP raises concerns with respect to the nature of analysis of weather conditions under NUREG-0654.

AWPP points out that the concept of "adverse weather" under the guidance does not necessarily reflect the precise types of winter conditions in the area surrounding Graterford. AWPP cites by example alleged road blockages caused by blizzards during the previous winter. AWPP Notice of Appeal (July 26, 1985) at 3-4.

AWPP's argument here is an impermissible challenge to NRC Regulation. See 10 C.F.R. 2.758(a). The record contains expert testimony that NUREG-0654 was not intended to require consideration of all possible weather outcomes. See p. 19, supra. To the extent AWPP is unhappy with NUREG-0654 in its present form, it has avenues other than the adjudication at hand through which it could seek to amend the guidance. See 10 C.F.R. 2.758(b).

Inmate witness Robert Morris asserted, contrary to Dr. Urbanik's testimony, that the Graterford ETE should include a combination of worse case scenarios. Morris Deposition fol., Tr. 21,013 at 41-55. Mr. Morris admitted he was not unfamiliar with NUREG-0654 or any other emergency planning regulations for nuclear power plants. Id. at 38-49. In light of his unfamiliarity with applicable regulatory guidance and in view of Dr. Urbanik's explanation why worst case scenarios are not appropriate under Appendix 4, NUREG-0654 for consideration in developing an ETE for a special facility, the Board properly found Mr. Morris' testimony lacking in any probative value. See Fourth PID at 23.

The record also establishes reasonable assurance that the Department can mobilize additional manpower to carry out an evacuation in a timely fashion. Superintendent Zimmerman testified that past experience with other correctional institutions and, more specifically, with biennial tests of the Graterford non-radiological emergency plan, suggests that use of the institution's off-duty personnel can be mobilized within one-to-two hours using the institutions call-up system. Zimmerman, fol. Tr. 20,763 at 5; Tr. 20,808-09, 20,839-40. As a practical matter, most of the needed personnel would already be on-site, and thus no more than 300 staff would need to be mobilized this way. Zimmerman, Tr. 20,840-42.

When compared with the record testimony presented by Superintendent Zimmerman, the inmates' arguments on the adequacy of the ETE with respect to manpower mobilization are without substance. The "testimony" of inmate witness Morris on the alleged inadequacy of commercial telephone lines is mere conjecture. Specifically, Mr. Morris commented, in reference to the Graterford ETE:

And at the bottom of that page I raise the question: Did anybody consider whether the telephone systems are adequate to get all these people together? Everybody is going to be getting on the phone as soon as an emergency is declared and people are told to evacuate. Can the parents even get a hold of the school and say hey, I'm going to pick up my child?

Again, this is part of your panic factor.

Morris Deposition, fol. Tr. 21, 013 at 80-81. As Mr. Morris admitted, his statements regarding "panic" in a radiological

emergency are no more than a layman's perception of human behavior. Id. at 60. The testimony of township supervisor Brown previously in this proceeding with respect to delays during a flood was addressed by the Board in its Third Partial Initial Decision and properly rejected as a basis for a separate inmate contention. See p. 5, supra.

4. Plans Are In Place To Ensure Inmate Cooperation In A Radiological Emergency

Graterford Superintendent Zimmerman testified that inmates will be provided information about what to do in an evacuation of the institution. This information will take the form of an addendum to the inmate handbook. Zimmerman, fol. Tr. 20, 763 at 4; Tr. 20,833-84. Superintendent Zimmerman testified further that, based on his past experience at Graterford, inmates cooperate with institution staff in emergencies when the inmates recognize it is for their benefit. Zimmerman, fol. Tr. 20,763 at 3. Based on this testimony, the Licensing Board found it reasonable to expect that a "lockdown" of the Graterford facility in preparation for evacuation could be accomplished in the 30 minutes estimated by the Department of Corrections. Fourth PID at 16, 20-21.

Inmate witness Case expressed concern that a lockdown might take significantly longer than projected by the Department. His concern, however was based on the assumption that the inmates would not be informed about the nature of the emergency and the

procedures for evacuation. See Case, Tr. 20,947. Superintendent Zimmerman's explanation of the information inmates would receive prompted Case to opine that the inmates would cooperate and thus a 30-minute lockdown could be achieved. Mr. Case stated:

But in view of what Mr. Zimmerman has testified to, I think the inmates....are going to operate in their best interest, which would be to get into their cells quickly so that they could be moved quickly to a place of greater safety.

Case, Tr. 20,947. Major Case thus acknowledged that thirty minutes was a realistic time estimate for lockdown of institution. Id.

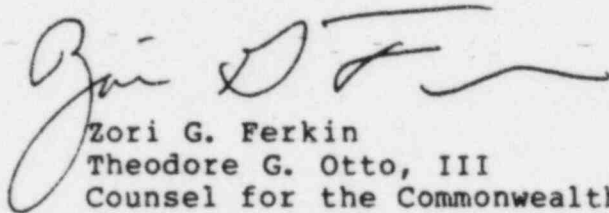
On appeal the inmates ask for a drill in which inmates would participate. The implication of this argument is that such an exercise is the only way to test the cooperation of the inmates. The inmates also challenge the adequacy of the informational addendum to the inmate handbook, citing alleged statistics with respect to the illiteracy of the inmate population as well as how the handbook is distributed to inmates. Inmates Brief at 32. With respect to the request for a drill, NRC regulations do not require public participation in drills. See 10 C.F.R Part 50, Appendix E. The March 7, 1985 remedial exercise adequately tested the response of the Graterford institution and was approved by FEMA. The inmates' "statistics" were never put forth on the record, either through inmate witness Case or through cross-examination of Superintendent Zimmerman. The Appeal Board therefore should not consider them. See also Limerick, supra, CLI-85-15, 22 NRC at — (slip opinion at 7 n.5).

The inmates cite in their brief a number of incidents at Graterford where lockdown time was allegedly greater than 30 minutes. Inmates Brief at 31. The record indicates that the lockdown times reflected in these situations do not detract from the adequacy of the lockdown time included in the Department's ETE for Graterford. If an incident occurred at night or during a population count, the institution would already be locked down and no time for lockdown would be required. Zimmerman, fol. Tr. 20,763 at 3-4. In the power failure of September 12, 1983, the institution did not have an automatic emergency lighting backup system. Zimmerman, Tr. 20,782. This was true as well in the case of the February 23, 1984 power failure. Zimmerman, Tr. 20,842-43. Since a backup lighting system was installed at the institution in 1984, lockdowns have been accomplished during power failures in one or more cell blocks within 15 minutes. Zimmerman, Tr. 20,849-50. With respect to the third incident cited by inmates (a hostage siege occurring in October 1981), Superintendent Zimmerman was not associated with Graterford at the time and thus unable to testify regarding the lockdown procedure or the circumstances. Zimmerman, Tr. 20,786-87. In light of the testimony by Superintendent Zimmerman on prior lockdown times and the inmates' own witness' concurrence with the Department's estimate, it is reasonable to assume inmates will cooperate and that the 30 minutes allowed for lockdown in the ETE can be achieved.

V. CONCLUSION

For the foregoing reasons, the Commonwealth of Pennsylvania respectfully requests this Appeal Board to affirm the Fourth Partial Initial Decision and the denial of other contentions not admitted for hearing.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Zori G. Ferkin", with a stylized flourish at the end.

Zori G. Ferkin
Theodore G. Otto, III
Counsel for the Commonwealth of
Pennsylvania

Dated: September 23, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

CERTIFICATE OF SERVICE

DOCKETED
USNRC

'85 SEP 25 A9:59

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

Docket Nos. 50-352
50-353

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that I have this 23rd day of September, 1985 served copies of "Brief of the Commonwealth of Pennsylvania In Response to Appeals of the Graterford Inmates and Air and Water Pollution Patrol in Relating to the Fourth Partial Initial Decision of July 22, 1985 and the Order of June 12, 1985 Admitting and Denying Certain Contentions" the above-captioned matter upon the following by deposit in the United States mail, postage paid:

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

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

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

Robert L. Anthony
Friends of the Earth of the
Delaware Valley
P.O. Box 186
103 Vernon Lane
Moylan, PA. 19065

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

Joseph H. White, III
234 Edgemont Avenue
Ardmore, PA. 19003

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

Charles W. Elliott, Esq.
Brose and Postwistilo
325 N. 10th Street
Easton, PA. 18042

Troy B. Conner, Esq.
Conner and Wetterhahn, P.C.
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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

Page two

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

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

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

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

Angus Love, Esq.
101 East Main Street
Norristown, Pennsylvania 19404

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

Christine N. Kohl
Atomic Safety and Licensing
Appeal Board
U.S. NRC
Washington, D.C. 20555

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

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

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

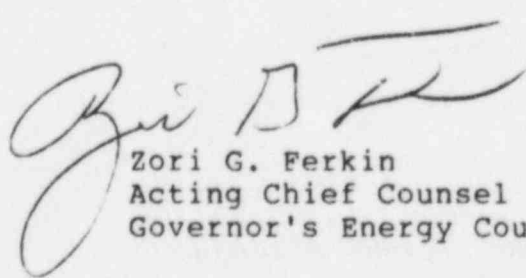
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Building
15th and JFK Boulevard
Philadelphia, PA. 19107

Director, Pennsylvania Emergency
Management Agency
B-151 Transportation and Safety
Building
Harrisburg, PA. 17120

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

Jay Gutierrez, Esq.
U.S. Nuclear Regulatory Commission
Region I
631 Park Avenue
King of Prussia, PA. 19406

Reginald L. Gotchy
Atomic Safety and Licensing
Appeal Board
U.S. NRC
Washington, D.C. 20555


Zori G. Ferkin
Acting Chief Counsel
Governor's Energy Council

Dated: September 23, 1985