

UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

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In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

:
:
: Nos. 50-352 and 50-353 *cl*

MEMORANDUM OF LAW

I. INTRODUCTION

The inmates of the State Correctional Institute at Graterford, Pennsylvania, through their attorney, Angus R. Love, hereby request this Honorable Court to issue a stay of the Atomic Safety and Licensing Board's Fourth Initial Partial Decision LBP-85-25, July 22, 1985. On July 25, 1985 the inmates filed a Notice of Appeal of the Licensing Board's decision with the Atomic Safety and Licensing Appeal Board. In their Notice of Appeal they requested that all proceedings be stayed pending resolution of the appeal. The appeal filed by the inmates involves five bases for contentions which were rejected by the Atomic Safety and Licensing Board in their order of June 12, 1985 entitled, Order Admitting Certain Revised Contentions of the Graterford

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Inmates and Denying Others. The appeal also involves two additional bases for the inmates' contention which were fully litigated during the week of July 15, 1985. The essence of the appeal contends that the five previously rejected contentions should have been admitted, and that the two litigated and rejected contentions were rejected contrary to the weight of the evidence presented at the hearings. The inmates further contended in their appeal that the Atomic Safety and Licensing Board failed to provide a fair and impartial tribunal as mandated by 10 CFR 2.718. The Appeal Board summarily denied the request for a stay in its order of August 1, 1985. The inmates now pursue an appeal of the denial of the stay pursuant to 10 CFR 2.762.

II. A STAY OF THE FOURTH PARTIAL INITIAL DECISION SHOULD BE GRANTED
BECAUSE THE GRATERFORD INMATES HAVE SATISFIED THE REQUIREMENTS OF
10 CFR 2.788.

In order for a stay order to be issued by the Nuclear Regulatory Commission the criteria set forth in 10 CFR 2.788 must be satisfied. The Graterford inmates' initial request for a stay to the Atomic Safety and Licensing Board was summarily denied for failure to address the stay criteria of the previously mentioned regulation. The inmates hereby address the stay requirements of 10 CFR 2.788 and request that a stay be issued. (See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 270 through 271 (1978).) An intervenor may file an application for a stay of the effectiveness of a decision within ten days of service of said decision. (See 10 CFR 2.788(a).) The inmates were notified of the Fourth Initial Partial Decision on July 22, 1985. On July 25, 1985, the inmates filed

a Notice of Appeal and a Request for a Stay before the Atomic Safety and Licensing Board, thereby satisfying the ten day requirement of both 10 CFR 2.788 and 10 CFR 2.762. On August 1, 1985, the Atomic Safety and Licensing Appeal Board issued an order summarily denying the inmates' request for a stay of the Fourth Partial Initial Decision. The inmates hereby request the Nuclear Regulatory Commission to review the denial of the stay pursuant to their powers under 10 CFR 2.762. The inmates have thereby satisfied the initial time frame within which to appeal a stay order.

In determining whether to grant or deny an application for a stay, the Commission will consider:

1. whether the moving party has made a strong showing that it is likely to prevail on the merits;
2. whether the party will be irreparably injured unless a stay is granted;
3. whether the granting of a stay would harm other parties; and,
4. where the public interest lies.

(See 10 C.F.R. 2.788(e).)

The inmates contend that they meet the four above-mentioned criteria, warranting the issuance of a stay by the Nuclear Regulatory Commission.

A. The moving party has made a strong showing that it is likely to prevail on the merits.

The inmates filed a petition to intervene in the above-captioned matter in September of 1981. Said petition, after a supplemental filing, was granted in June of 1982 as the Atomic Safety and Licensing Board accorded the inmates

intervenor status pursuant to 10 CFR 2.714. No further action took place until December 14, 1984 when the Graterford inmates' attorney received the Radiological Emergency Response Plan for the State Correctional Institute at Graterford. Said plan had been "sanitized" and heavily censored. The plan was 27 pages in length and included approximately 50% deletions. On January 28, 1985, the Atomic Safety and Licensing Board denied the inmates' request for additional disclosure and ordered that their contentions be filed within fifteen days of that date. The inmates' request for a stay was also denied at that time. The inmates then filed their contentions pursuant to the Board's order and took a corresponding appeal to the Atomic Safety and Licensing Board with respect to the issue of further disclosure. At the Appeal Board's suggestion, a compromise was worked out which enabled the inmates' attorney and their expert, Major John Case, to review virtually the entire plan on March 18, 1985, under the auspices of a protective order of the court. At that time, the inmates then sought to revise their previously filed contentions at a meeting held in Harrisburg on March 22, 1985 with all participants in attendance. The Licensing Board once again thwarted the inmates' efforts to raise safety considerations in this licensing proceeding by denying their right to restyle their contentions. Shortly thereafter, the Licensing Board issued an order dismissing the Graterford inmates from the proceeding. The inmates filed an appeal of their dismissal, which was reversed by the Atomic Safety and Licensing Appeal Board's order of May 1, 1985. Said decision ordered the inmates reinstated as intervenors and gave them until May 15, 1985 in which to file their proposed revised contentions. Once again, the Licensing Board side-stepped this issue by

their granting of the applicant's Motion for an Exemption from the Requirements of 10 CFR 50.47(a) and (b) as they relate to the Contentions of the Graterford Inmates. Thus, the inmates, having been involved in the proceeding for over three years, awaiting an opportunity to provide input into this important issue, were once again met with a hostile Licensing Board who effectively thwarted their input once again. The inmates appealed this Board's decision granting the exemption and once again were successful in their efforts as the Nuclear Regulatory Commission refused to finalize the granting of an exemption and ordered the Licensing Board to respect the hearing rights of the Graterford inmates. (See Memorandum and Order of the Nuclear Regulatory Commission, June 11, 1985, CLI-85-11, and the Decision of the Atomic Safety and Licensing Appeal Board of June 17, 1985 ALAB-809.) The inmates filed their revised contentions on May 15, 1985. On June 13, 1985, the Licensing Board admitted two of the eight contentions in its order entitled Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others. The inmates have filed an appeal for five of the six rejected contentions and litigated the two admitted contentions during hearings held on July 15, 1985. During those hearings, the inmates presented expert testimony from Major John Case, Field Director of the Pennsylvania Prison Society, and Robert L. Morris, a traffic control expert. It is the inmates' contention that the Licensing Board prematurely rejected five of the six initial contentions and failed to properly weigh the evidence in its rejection of the two litigated contentions. This matter is currently pending review before the Atomic Safety and Licensing Appeal Board.

The inmates contend that the Licensing Board's history of dealing with this

issue indicates an inherent prejudice and hostility to this issue. The Licensing Board has attempted to divert the inmates from presenting their contentions at every possible opportunity. They have done so despite agreements on the record that the inmates' position had considerable justification. (See Footnote 20 of the Decision of the Atomic Safety and Licensing Appeal Board, May 1, 1985.) The Licensing Board has also twice ruled that the inmates' contentions are insignificant. (See Board's Order of May 9, 1985, granting the applicant's Request for an Exemption from the Graterford Issues at p. 3, and the Board's Order of April 12, 1985 dismissing the Graterford inmates as a party to this proceeding.) The inmates point out in summary that they have had to appeal the Licensing Board's decisions on three separate occasions in order to present their contentions, and have been successful on all three occasions in achieving the relief requested.

While the issues before the Atomic Safety and Licensing Appeal Board are many and complex, the inmates would like to point out one issue which is illustrative of their efforts to litigate safety concerns with respect to the Radiological Emergency Response Plan for Graterford. The issue to which the inmates draw the Commission's attention involves the use of call up system to mobilize the manpower necessary to conduct an evacuation from the prison. Initially, the inmates contended that the use of the commercial telephone lines in the event of a nuclear emergency at the Limerick Generating Station was unreliable. The Board rejected this contention in its first review of the proposed contentions on April 12, 1985. The inmates then pointed out prior testimony from an AT&T technician by the name of Rick Brown, who is also a

supervisor for Lower Providence Township, Pennsylvania, who stated that dial tone delays took up to thirty minutes during the floods caused by Hurricane Agnes in 1972. (See Tr. 18,226, 18,149 and 18,133.) During discussions about this issue at the March 22, 1985 conference in Harrisburg, Pennsylvania, the Department of Corrections indicated that it had four commercial telephone lines and one dedicated phone line with a direct connection to the Pennsylvania State Police. (See also Commonwealth Response to Proposed Revised Contentions of Graterford Inmates, p. 4.) When the Licensing Board rejected the inmates' contention in their April 12, 1985 order, they indicated that the prison had five dedicated telephone lines and a direct connection with the Pennsylvania State Police. In a subsequent filing, the inmates pointed out this factual error to the Licensing Board and further bolstered their argument with prior precedent with respect to the use of commercial telephone lines during a nuclear emergency. The inmates drew the Board's attention to the matter of Cincinnati Gas and Electric Company, et al, (William H. Zimmer Nuclear Power Plant, Unit 1), Docket No. 50-358; 17 NRC 760 (1983).) In this case, the Atomic Safety and Licensing Appeal Panel, while reviewing the adequacy of offsite emergency planning, stated "The Board reasoned (and the applicant concedes) that during an emergency the commercial telephone circuits, including those serving the schools, likely would become overburdened as a result of heavy public usage and thus be unavailable for public use." (See Cincinnati Gas and Electric Company, supra at 786.) Despite the additional arguments, the Licensing Board once again rejected this rationale in their order of June 12, 1985 entitled, Order Admitting Certain Revised Contentions of the Graterford Inmates and

Denying Others. During the hearings held on July 15, 1985, Superintendent Zimmerman of the State Correctional Institute at Graterford, when testifying with respect to the manpower mobilization component of the estimated time of evacuation, stated that a call up system utilizing the commercial phone lines would effect the manpower mobilization component. (See Tr. 20,808.) When inmates' counsel attempted to inquire further with respect to the call up system, Chairman Hoyt solicited an objection and when unsatisfied, sustained a qualified objection and refused to allow any further discussion with respect to this issue. (See Tr. 20,809 through 20,811.) The inmates further bolstered their claim as to the unreliability of the commercial telephone lines through the testimony of their expert, Robert L. Morris, who was concerned that commercial telephone lines may be unable to respond to the call up system needs. (See Morris deposition, p. 80.) Despite all of the evidence submitted regarding the unreliability of the commercial telephone lines, the Licensing Board once again ruled in its issuance of its Fourth Partial Initial Decision on July 12, 1985, that this issue was unworthy of any further consideration. The inmates believe that they have more than carried their burden with respect to this issue, however, an inherent prejudice and partiality on the part of the Licensing Board has prevented justice from being done. It is for these reasons that the inmates believe they have made a strong showing that they will likely prevail on the merits of the issues currently pending before the Atomic Safety and Licensing Appeal Panel.

B. The Party will be Irreparably Injured unless a Stay is Granted.

In accordance with 10 CFR 50.47, the applicant, through the cooperation with the Federal Emergency Management Agency and the Pennsylvania Emergency Management Agency must provide a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The inmates point out the unique nature of the issue currently before the court. For the first time in history, a nuclear power plant has within its 10 mile EPZ a maximum security state correctional facility. According to the mandate of the United States Congress, in the implementation of 10 CFR 50.47, the applicant through the various respective agencies must prove that it can evacuate everyone within the 10 mile radius of the nuclear power plant. The evacuation of a maximum security state penal facility represents a challenge to emergency planners. Rather than accept this challenge, the Atomic Safety and Licensing Board has made every attempt to divert the inmates and their contentions with respect to this issue. (See Procedural History in previous section.) If a full power license is issued prior to resolution of the many outstanding issues, the health and safety of the inmates, staff and public alike may be in danger. The inmates point to the issue with respect to civilian bus driver training as further evidence of this contention. To date, one two-paragraph form letter has been sent by the Pennsylvania Emergency Management Agency to six bus providers located as far as 190 miles away from the State Correctional Institute at Graterford. Said letter was mailed on April 4, 1985 and has received no response whatsoever. The Licensing Board has ruled that this is sufficient to guarantee that training of said civilian personnel will in fact occur. Common

sense dictates otherwise. If an accident were to happen in the near future, the bus drivers, if available at all, would be untrained and therefore unable to conduct their responsibilities in the evacuation plan. No alternatives have been suggested if the bus drivers fail to participate. This represents one of many issues, such as the commercial phone lines discussed in the previous section, which must be resolved in order for the evacuation plan to work effectively. The inmates therefore contend there is a substantial likelihood that they will suffer irreparable injury unless a stay is granted.

C. Granting of the Stay Would Not Harm Any Other Parties.

Despite the numerous arguments of the applicant Philadelphia Electric Company that they have a considerable investment at stake, the inmates contend that haste makes waste. This old cliché has never been more suitable than for the current issue before the Court. The applicant announced its intention to begin construction of the Limerick facility in 1968 and estimated the overall cost of said project to be 289 million dollars. Today, some seventeen years later, the estimates have risen to 7.23 billion dollars. At stake, as we have seen in the TMI accident of 1979, is the health and safety of the inmates and general public alike surrounding the Limerick generating facility. The dangers associated with nuclear energy are well known. In order to fulfill the mandate given to the Nuclear Regulatory Commission by the United States Congress in promulgating the emergency planning requirements of 10 CFR 50.47, it is necessary to provide a reasonable assurance that adequate safety measures will be taken. The inmates vigorously oppose any and all attempts to speed up the process in order to alleviate the applicant's poor planning and financial

burden. With respect to the other parties in the proceeding, a thoughtful, well developed radiological emergency response plan for the State Correctional Institute at Graterford is in everyone's best interest. The inmates' concerns are obvious. The prison's concerns are likewise obvious. The public's concern that an evacuation of individuals who have been sentenced to lengthy terms in a penal facility is equally obvious. Given the potential for havoc if an evacuation of the prison goes awry, a workable plan is a must for all concerned.

D. Where the Public Interest Lies

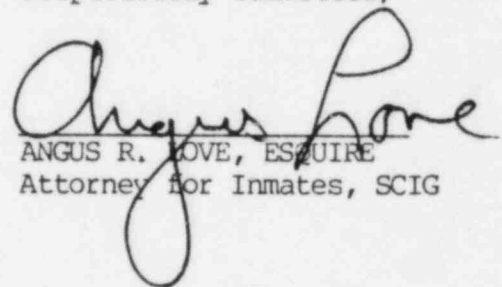
Much has been made in previous filings of the applicant's financial condition and its desire to obtain a full power license. The inmates would like to point out that the applicant has yet to resolve a major concern with respect to obtaining sufficient water in order to operate said plant at maximum capacity. The applicant is also anxious to pass the financial burden of the Limerick facility from its stockholders to its rate payers. The issuance of a full power license will enable the applicant to shift said burden. With the tremendous expenditure that has currently been made, i.e., 7.23 billion dollars, there will be a significant increase in electricity rates throughout the Delaware Valley upon issuance of said license. This increase in electric rates will further burden the economic community of the Delaware Valley. Such burdens on the businesses in our area will also put additional pressures upon employment opportunities in the Delaware Valley. The inmates contend that the increase in electric rates coupled with the potential for danger from a nuclear accident outweigh the applicant's financial concerns and dictate that the public interest is not the applicant's interest in this issue. The inmates note that

the Point Pleasant Pump Station referendum in Bucks County is a statement of the public in opposition to the applicant's interests. The inmates further note that a similar referendum is currently being pursued in the County of Montgomery and request that the Commission stay all proceedings until such a referendum can determine once and for all the public interest in this issue.

III. CONCLUSION

For the aforementioned reasons, the inmates respectfully request this Honorable Commission to enter a stay of the Licensing Board's Fourth Partial Initial Decision until all matters can be resolved on appeal.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Angus R. Love".

ANGUS R. LOVE, ESQUIRE
Attorney for Inmates, SCIG

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of : '85 AUG 12 AIO:45
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Station,
Units 1 and 2) : NOS. 50-352 and 50-353

OFFICE OF SECRETARY
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CERTIFICATE OF SERVICE

I, Angus R. Love, attorney for the inmates at the State Correctional Institute at Graterford, hereby certify that a true and correct copy of the NOTICE OF APPEAL REGARDING DENIAL OF STAY, accompanied by the MEMORANDUM OF LAW, was mailed to the following list on Thursday, August 8, 1985, by first class mail, postage prepaid.

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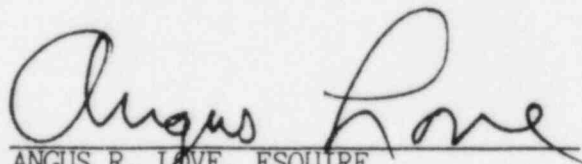
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