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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

IN THE MATTER OF :

PHILADELPHIA ELECTRIC COMPANY :

(Limerick Generating Station  
Units 1 and 2)

: Nos. 50-352 and 50-353 -OL

BRIEF OF THE INTERVENOR GRATERFORD INMATES

I. INTRODUCTION

The inmates of the State Correctional Institute at Graterford, Pennsylvania, intervenors in the above-captioned operating license proceeding, hereby submit their Brief pursuant to their Notice of Appeal filed with this Board on July 25, 1985. This Brief seeks the review of two recently issued decisions. Initially, the inmates seek a review of the Fourth Partial Initial Decision on offsite emergency planning contentions relating to Graterford, which was docketed as ASLBP No. 81-465-07 OL and served on July 22, 1985. This decision dismissed two issues regarding the State Correctional Institute at Graterford. These issues involved the estimated time of evacuation and training for civilian employees. The Brief will also address an earlier order of the Atomic Safety and Licensing Board which was issued on June 12, 1985 and was entitled Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others. The inmates note that they sought an earlier review of this decision by way of their exceptions filed to that decision with the Licensing

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Board on June 24, 1985. Said exceptions were denied by the Licensing Board's order of July 2, 1985. The inmates subsequently appealed to this Board on July 11, 1985. Said appeal was declared to be interlocutory and dismissed by this Board on July 15, 1985. The Appeal Board noted, "Whether the Licensing Board erred in rejecting one or more of the inmates' contentions can be raised on appeal from the Board's final order." (See p. 1, Memorandum and Order, July 15, 1985.) The inmates contend that said prior appeal is now ripe when combined with the Fourth Partial Initial Decision of the Licensing Board. Thus, the inmates bring to the Appeal Board's attention the two issues which were litigated and denied and five of the six previously proposed bases for their contention that the Radiological Emergency Response Plan for Graterford is inadequate. The inmates argue that when these two decisions are merged and reviewed that their rights to a fair and impartial tribunal, their right to a decision based upon the weight of the evidence, and certain procedural rights have been denied.

## II. HISTORY OF INTERVENTION BY INMATES OF THE STATE CORRECTIONAL INSTITUTE AT GRATERFORD

Although the history of the intervenor Graterford inmates has been recited many times, the inmates believe that it is important to their overall appeal that the history be cited once again to show the many hurdles that have been placed before the inmates in this licensing proceeding.

The Graterford inmates filed a petition with the Board to intervene in these proceedings on September 18, 1981. The Licensing Board ordered a supplemental memorandum to be filed by the inmates per their order of October

14, 1981. In response to said order, the inmates provided 19 affidavits of long-term residents at the State Correctional Institute at Graterford. On June 1, 1982, the inmates were admitted as a party to this proceeding via the Board's special prehearing conference order. No further action occurred with respect to this matter until April 20, 1984 when the Board ordered the contentions based upon the Radiological Emergency Response Plan for the State Correctional Institute at Graterford would be filed by the Graterford inmates twenty days after they received the plan. Despite numerous assurances from the Commonwealth that the plan would soon be forthcoming, it was not received until December 13, 1984, over three years after the inmates' initial filing. The plan that was provided on that date was a "sanitized" version of the real plan and will be heretofore referred to as Plan 1. Plan 1 was approximately 26 pages in length and contained much censorship which was withheld by the Bureau of Corrections for "security" reasons. The inmates reviewed said plan with counsel and with their expert, Major John Case, Field Director of the Pennsylvania Prison Society. After said review, it was determined that further disclosure was necessary in order to frame the contentions of the inmates. On December 20, 1984, counsel for the inmates filed a Motion for Order Requiring Full Disclosure by the Pennsylvania Emergency Management Agency of the Evacuation Plan for the State Correctional Institute at Graterford. In essence, the inmates sought the right to have their attorney and expert review the contentions of the entire plan under the auspices of a protective order from the court. The Board heard oral argument on these motions on January 29, 1985 and dismissed the inmates' request for further disclosure. The Licensing Board did so despite

acknowledging the inadequacies of Plan 1. (See Tr. 20,432, 20,468, 20,474, and 20,640.)

The inmates requested a stay of their obligation to file contentions within twenty days of receipt of the plan. Said stay was rejected by the Board via an oral ruling on January 29, 1985 and confirmed in a written order issued February 5, 1985 and directing the inmates to file their contentions no later than February 18, 1985. The inmates then filed an appeal with this Board on February 8, 1985 and filed their contentions per the Board's order based upon Plan 1 on February 15, 1985. On February 12, 1985, this Board issued a memorandum and order which dismissed the inmates' petition as premature, but observed that the disclosure issues could be resolved through compromise and the use of protective orders in the handling of sensitive but disclosable material. (See Appeal Board Memorandum and Order of February 12, 1985 unpublished.) A compromise was reached and finally on March 18, 1985, under a protective order issued by the Licensing Board, the Commonwealth provided counsel for the inmates and their expert, Major John Case, with a copy of Plan 2. Plan 2, which was over 80 pages in length, satisfied the concerns of the inmates with respect to the disclosure issue. Four days later, on March 22, 1985, the inmates sought to revise their original contentions based upon the additional information available to them through their review of Plan 2. The Licensing Board repeatedly denied the inmates' request to make revisions. (See Tr. 20,640, 20,657 through 20,661, 20,674 through 20,675, 20,691 through 20,697 and 20,702 through 20,706.) On April 12, 1985, the Licensing Board dismissed the Graterford inmates as a party to the licensing procedure. In their ruling, the Board stated that the



contentions of February 15th were insufficiently specific and that the inmates had failed to meet the criteria for filing late filed contentions. The inmates appealed this decision, which was subsequently reversed by the Appeal Board, on May 1, 1985. The Appeal Board noted that the Licensing Board's refusal to allow the inmates to respecify the bases for their contentions in light of the additional information available in Plan 2 was arbitrary. (See p. 8 of Atomic Safety and Licensing Appeal Board Decision of May 1, 1985.) It further noted that, "The Board's unexplained reversal of its previously consistent view that the Graterford inmates must be accorded a reasonable opportunity to reshape their contentions once an adequate form of the prison emergency plan was released -- is plainly arbitrary." (See p. 10, supra.) The Appeal Board further noted that the Licensing Board had been unduly critical of the inmates' counsel for failure to attend all hearings with respect to emergency planning. (See Footnote 32, supra.) The Appeal Board also noted that any delays in this proceeding cannot be laid at the feet of the Graterford inmates. (See p. 16, supra.) Finally, the inmates were given until May 15, 1985 to submit their revised emergency planning contentions.

As the inmates prepared their contentions for filing per the Appeal Board's order, the Licensing Board granted the applicant's request for an exemption from the Graterford issues on May 9, 1985. Once again the Licensing Board had thwarted the inmates' attempts to provide input in the licensing process. The inmates' attorney was once again forced to appeal the granting of the exemption and at the same time submit the revised contentions, per the Appeal Board's order of May 1, 1985. Said revised contentions were submitted on May 13, 1985.

The appeal taken by the inmates with respect to the exemption grant was addressed by the Nuclear Regulatory Commission during an open meeting on June 11, 1985. The NRC declined to make effective the Licensing Board's order which together with a prior order, authorized the director, Nuclear Reactor Regulation to issue to the applicant Philadelphia Electric Company, a full power operating license for the Limerick Generating Station. The Commission found that, "Important questions regarding the hearing rights of the inmates of the State Correctional Institute at Graterford, Pennsylvania, have not yet been resolved." (See p. 2, Memorandum and Order, CLI-85-11, June 11, 1985.) On June 12, 1985, the Atomic Safety and Licensing Board issued an order entitled Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others. In said order, the Licensing Board accepted two of the eight revised contentions of the inmates. These two issues involved the methodology or the lack thereof in development of an estimated time of evacuation and the training which is to be provided to the civilian employees who will be participating in the evacuation. The inmates appealed five of the six rejected issues which are hereby merged with the accepted and litigated contentions for consideration by this Appeal Panel.

The inmates have recited this history so that the Appeal Board will be aware of the many hurdles that have faced the Graterford inmates in their attempt to provide input into the licensing process. These hurdles were in many instances created by a hostile Licensing Board that made many prejudicial statements against the inmates throughout the licensing procedure. They repeatedly questioned the motives and the resources of the Graterford inmates.

(See Order Granting Applicant's Motion for Exemption from Requirements of 10 CFR 50.47(a) and (b) for a Period of Time any Potential Contentions of Remaining Party are Considered by the Board, May 9, 1985.) In said order, the Board states, "Unless the inmates are using judicial process for an end to which the Board is not privy..." (See p. 3, supra.) The Licensing Board also stated that, "We find little, if any, indication of a desire to assist in developing this record," when referring to the inmates' participation in the development of a sound record. (See Memorandum and Order on Graterford Prisoners' Proposed Contentions, Atomic Safety and Licensing Board, April 12, 1985 Order at p. 11.) In addition to questioning the motivation of the inmates and their expert, the Board noted on several prior occasions that they considered the issues raised by the inmates to be insignificant. (See Order Granting Applicant's Motion for Exemption from Requirements of 10 CFR 50.47(a) and (b) for a Period of Time any Potential Contentions of Remaining Party are Considered by the Board, May 9, 1985, and Memorandum and Order on Graterford Prisoners' Proposed Contentions, April 12, 1985.) The sum total of these two documents resulted in the inmates' concerns being dismissed on two separate occasions by the Licensing Board. Only after intervention by the Appeal Board was the Licensing Board forced to face these issues directly. The inmates take exception to the Licensing Board's characterization of their motives and of the merits of their contentions. The inmates note that two experts have testified on behalf of the inmates, Major John Case, Field Director of the Pennsylvania Prison Society, and Robert L. Morris, a traffic control expert. Furthermore, the inmates point to this Board's comment that any delays could not be laid at the feet of the Graterford

inmates. Thus, the Appeal Board must keep in mind the inherent hostility of this Licensing Board when reviewing the two decisions that are the bases for this appeal.

### III. LEGAL ARGUMENT

#### A. Standard for Review

The appropriate standard for review with respect to the admissibility of contentions can be found in 10 CFR 2.714(a) 1. The five factors cited include, (1) good cause, if any, for failure to file on time; (2) the availability of other means whereby the petitioner's interest will be protected; (3) the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record; (4) the extent to which petitioner's interest will be represented by existing parties, and (5) the extent to which petitioner's participation will broaden the issues or delay the proceeding. (See 10 CFR 2.714(a) 1. A contention must also satisfy the criteria of 10 CFR 2.714(b), which holds that "The petitioner shall file a supplement to his Petition to Intervene which must include a list of the contentions which petitioners seek to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." Initially, the Licensing Board ruled that the intervenor Graterford inmates had failed to achieve the necessary balance with respect to the five factors of 10 CFR 2.714(a) 1. (See Memorandum and Order on Graterford Prisoners' Proposed Contentions, April 12, 1985 ruling by the Atomic Safety and Licensing Board.) Said review was reversed by the Appeals Council in its May 1, 1985 order which stated that the factors weighed in the favor of the inmates. (See Decision of Atomic Safety and Licensing Appeal Board, May 1, 1985, at 18.)



The inmates' one contention reads, "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." (See Proposed Revised Contentions of the Graterford Inmates, May 13, 1985.) In the Licensing Board's initial rejection of six of the eight contentions on June 12, 1985, they state that they will review the eight bases for said contention in order to determine whether they meet the reasonable specificity requirement of 10 CFR 2.714(b). (See Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, June 12, 1985 at 2.) Thus, the standard for review with respect to the five of the six initially rejected bases is specificity. This was reiterated by the Appeal Board in their May 1, 1985 decision when they indicated that the Graterford prisoners' refiled contentions should be submitted to the Licensing Board who will "determine only whether the contentions have adequate bases and specificity," at p. 18 supra. This test of reasonable specificity has been affirmed in subsequent court decisions. (See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 686 (1980); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020, 1028 (1984).) It has further been held that a contention must be rejected where: (1) it constitutes an attack on applicable statutory requirements; (2) it challenges the basic structure of the Commission's regulatory process, or is an attack on the regulations; (3) it is nothing more than a generalization regarding the intervenor's particular view of what the applicable policies ought to be; (4) it seeks to raise an issue which



is not proper for adjudication in the proceeding or does not apply to the facility in question; or (5) it raises an issue which is not concrete. (See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 through 21, (1974), and 10 CFR 2.758(a).) The purpose for the basis requirement of 10 CFR 2.714(b) is (a) to assure that the hearing process is not improperly invoked because the subject sought to be put in issue suffers from any of the infirmities set forth in Peach Bottom, supra at 20 through 21; (b) to establish sufficient foundation to warrant further inquiry into the subject matter; and (c) to put the other party sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose."

With respect to the five of the six bases for the contention which were initially rejected, the inmates point out that at the pleading stage of a proceeding, petitioners need only identify the reasons for each contention. Houston Lighting and Power Company (Alan's Creek Nuclear Generating Station, Unit 1) ALAB-590, 11 NRC 542, 548 (1980).) Furthermore, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2) ALAB-130, 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the bases thereof, a Licensing Board may not reach the substantive merits of these contentions. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2) ALAB-182, 7 AEC 210, 216 through 217 (1974). The inmates therefore note that this is the applicable standard with which to judge five of the six rejected bases for their contentions. The two

other bases which have been the subject of litigation should be judged upon the record made during the hearings and the decision should be based on the weight of the evidence contained in said record.

B. The Graterford Inmates' Five Bases for their Contention which was Rejected by the Licensing Board in its Order of April 12, 1985 Do Meet the Reasonable Specificity Standard of 10 CFR 2.714(b).

The inmates contend that the five bases for their contention have been stated with reasonable specificity so as to meet the aforementioned standard of review. The five bases which will be discussed are: manpower mobilization, input of the correctional officers, medical services, simulated evacuation plan exercise, and the panic factor.

1. Manpower Mobilization

The inmates take exception to the Board's ruling that the use of commercial telephone line call-up system necessary to mobilize the institution's manpower would be adequate in an emergency. The inmates also take exception to the Licensing Board's rejection of the inmates' allegation that there exists a necessity for a back up system to the call-up system currently utilized to mobilize the manpower necessary to conduct the evacuation. The inmates draw the

Appeal Board's attention to the matter of Cincinnati Gas & Electric Co. et al (William H. Zimmer Nuclear Plant Station, Unit Number 1) Docket No. 50-358; 17 NRC 760 1983. In this case, the Atomic Safety and Licensing Appeal Panel reviewed the adequacy of the offsite emergency planning of the applicant. At page 768, the opinion states, "The Board reasoned (and applicants concede) that during an emergency the commercial telephone circuits, including those serving the schools, likely would become overloaded as a result of heavy public usage and thus be unavailable for official use." 15 NRC AT 1570, 1592 through 1593; Tr. 6542. It is the inmates' understanding of the proposed call-up system that one individual using commercial phone lines would be instructed to call ten individuals and inform them that they must report to work immediately. These ten individuals would in turn call ten additional individuals until all such personnel would be notified and mobilized. The inmates fail to understand the rationale of the Board when it states that the prison has five dedicated telephone lines and a direct connection with the Pennsylvania State Police. The inmates believe that this misses the point of the call-up system which would be relying on people's private lines and not the institutional telephone system. The Board has also erred in its factual analysis of this issue in that the State Correctional Institute at Graterford only has one dedicated phone line with which it utilizes to contact the Pennsylvania State Police. Furthermore, the institution has four commercial telephone lines upon which it will attempt to

initiate the call-up system. See Commonwealth Response to Proposed Revised Contentions of Graterford Inmates, page 4. Such a discrepancy in the Board's view of the facts and the facts as they actually are further points out the need for a hearing on this issue in order to determine what exactly are the capabilities of the State Correctional Institute at Graterford with respect to this issue. The inmates also point out, as previously cited, the testimony of Rick Brown, which appears in the transcript on pages 18,226, 18,149 and 18,133, at which time he discusses a realistic likelihood that the commercial phone lines would be overburdened as they were during the flood of 1972. The inmates further point out that Mr. Brown is a communications technician with American Telephone and Telegraph and is therefore qualified to speak to the capabilities of the phone system in the Graterford facility.

The inmates also take issue with the Board's rejection of the inmates' contention that a back up system is necessary to insure prompt communication between all persons mobilized in the event of a nuclear emergency. The inmates specifically contest the Board's conclusion that SCIG is not a principal response organization and therefore does not warrant the planning standards as outlined in 10 CFR 50.47(b)6 and its NUREG-0654 implementing Criterion II F.1. The Board has held that these regulations do not apply to Graterford, thus Graterford does not have to have an alternative to the commercial telephone lines. The rationale utilized by the Board is that the State Correctional Institute at Graterford is not a principal response organization meriting such consideration, but is in fact a support organization under the Commonwealth's Radiological Emergency Response Plan. The inmates point to the NUREG-0654

Appendix 5 entitled Glossary, which defines what category various organizations should be included therein. The definition for principal organizations reads as follows: "Federal, state, or local agencies or departments or executive offices and nuclear utilities (licensees) having major or lead roles in emergency planning and preparedness." The inmates contend that the State Correctional Institute at Graterford could be defined as a principal or suborganization and that such distinctions are arbitrary. NUREG 0654 warns against making specific designations and suggests that the various parties involved in emergency plans and preparedness define the particular roles, functions and responsibilities. It is the inmates' contention that an institution such as Graterford which is in essence a city behind walls should be given serious consideration for an alternative communications back up in light of the inherent difficulty in evacuating such an institution and the significant population at issue. For these reasons, the inmates respectfully request the Appeal Board to reinstate these two issues with respect to the mobilization of manpower necessary to complete an effective response to a radiological emergency at the Limerick Generating Station.

## 2. Input of the Correctional Officers (AFSME)

The inmates contend that there is no reasonable assurance that the correctional officers union is aware of the Bureau of Corrections concept of operations and its relationship to the total effort. The Licensing Board has ruled that there is no basis for such an assertion and they have denied the inmates' request for participation in some form or other of the guards' union.

The inmates draw the Appeal Board's attention to the



testimony of FEMA witnesses Asher and Cunard from earlier testimony which is located at Tr. 20210, at which time the following principle was expanded upon. Anyone who is obligated to take a risk, should be adequately informed. This is the gist of Mr. Asher and Mr. Cunard's testimony on behalf of FEMA and goes to the heart of the inmates' contention that the guards' union is instrumental in the implementation of an effective response and thus should be adequately informed of the risks inherent in such an operation. As the plan points out, the correctional officers will have a major role in a protective response to a nuclear emergency. They will be the primary source for the evacuation of the inmates from the institution. They will be called upon to conduct a lock down of the entire institution, to assist in the loading of the buses and vans, and will provide the necessary security during the evacuation. Therefore, their role in the planning process is significant. Based upon the aforementioned principle that those deeply involved in such an operation should also be given sufficient opportunity to provide input into the process and this can only be done upon being informed adequately of their role in the operation.

The inmates also point out that in prior contentions litigated before the Licensing Board, two union representatives were allowed to testify. Mr. Tauss testified regarding the bus drivers' participation in the evacuation of the school children. Mr. Tauss is a union representative of the SEPTA organization. Furthermore, Mr. Morabito, who represents PSEA, was also allowed to testify as to the effectiveness of his union in the emergency response planning. The inmates contend that they should not be held to a lesser standard than previous intervenors have been given. The Board's denial of input from the guards' union

is clearly a higher standard of admissibility than was granted for Limerick Ecology Action or Friends of the Earth contentions. While it is understandable that the Board is trying to expedite this matter as soon as possible, the inmates point out that the current delays were no fault of their own and thus should not be penalized by the use of a higher standard than similar intervenors. In support of this assertion, the inmates refer to the decision of the Atomic Safety and Licensing Appeal Board of May 1, 1985, docketed ALAB-806, which states on page 16 "...Any delay likely to result at this stage cannot be laid at the feet of the Graterford inmates." Thus, the inmates contend that the Board's rejection of input from the correctional officers' union after allowing input on prior contentions regarding the roles of the unionized personnel, is inconsistent and in effect penalizing the inmates for something that they could not avoid.

### 3. Medical Services

The inmates take exception to the Board's ruling that rejects their contention based upon adequacy of medical services. The exception that the inmates raise deals with procedural matters in the handling of contentions under the guidelines of 10 CFR 50.47 and NUREG 0654. It is the inmates' contention that the applicant must carry the burden initially in proving that reasonable assurances exist 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. See Consumers Power Company (Big Rock Point Plant) 16 NRC 1096 (1982). A reading of the Board's opinion dismissing this contention seems to indicate that it is the inmate's burden to prove the

inadequacy of the facilities in question. On page 7 of the Board's decision admitting certain revised contentions of the Graterford inmates and denying others, they state, "We are left in the dark as to what capacity it is that the inmates have in mind". This is an example of the Board's putting the cart before the horse and shifting the burden upon the inmates to prove the inadequacy of the medical facilities as opposed to the correct standard of the applicant proving the adequacy of such.

The inmates also contend that any discussions regarding the merits of said claims are premature. The inmates cite as a basis for this statement Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216 through 217 (1974); Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3) ALAB-216, 8 AEC 13, at 20 (1974); and Houston Lighting and Power Company (Alan's Creek Nuclear Generating Station, Unit 1) ALAB-590, 11 NRC 542, at 547 through 549 (1980). Thus, the inmates contend that the Board has overstepped their authority and shifted the burden inappropriately upon the inmates instead of the applicant.

#### 4. Simulated Evacuation Plan Exercise

The inmates take exception to the Board's rejection that there is no reasonable assurance that the table top exercise of the evacuation plan conducted on March 7, 1985 was adequate in terms of 10 CFR 50.47(b)14. As part of the rationale explaining their decision to deny this particular contention, the Board states that the inmates failed to "justify any requirement for inclusion of possible scenarios from NUREG-0654, Criterion N 3". The inmates

draw the Appeal Board's attention to the aforementioned criterion N and further directs the Appeal Board's attention to the subcategory E, which reads, "A narrative summary describing the conduct of the exercises or drills to include such things as simulated casualties, offsite fire department assistance, rescue of personnel, use of protective clothing, deployment of radiological monitoring teams, and public information activities." To the right of this evaluation criteria is a graph which depicts the applicability and cross reference to plans. Under the category of Licensee, state, and local, an X appears which indicates to the inmates that this particular requirement of a narrative summary should be included in the conduct of drills and exercises as contemplated by 10 CFR 50.47(b)14. Thus, the inmates contend that they have justified the requirement for inclusion of possible scenarios in the table top exercise. Thus, they believe the plan is deficient in this respect.

The inmates further point out that the Board's rejection of this contention fails to take into account new guidelines promulgated by the Nuclear Regulatory Commission on Wednesday, May 8, 1985, appearing in the Federal Register, Volume 50, Number 89. See also Union of Concerned Scientists vs. NRC, 735 F.2d 1437 (D.C. Circuit 1984). This case vacated a prior NRC 1982 amendment (47 FR 30232, July 13, 1982) to its emergency planning and preparation regulations which stated that emergency preparedness exercises were part of the operational inspection process and thus not required for any initial licensing hearing or decision. The ruling in the aforementioned case held that "Congress did not grant the commission discretion to remove so material an issue as the results of offsite emergency preparedness for required Section 189(a) hearings." See Union of Concerned Scientists vs. NRC supra at 1451. Thus, the inmates

contend that the Board has failed to apply this new more appropriate standard as it stated that the inmates' contention lacked a regulatory basis. See Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, ASLBP No. 81-465-07 OL page 11. The inmates respectfully request that the Appeal Board overturn this decision in light of the newly promulgated regulations.

While the inmates do not dispute the fact that the drill was found to be adequate by FEMA, pursuant to 50.47(b)14, they do point out that such a finding by FEMA that plans are adequate and capable of being implemented is entitled to a rebuttable presumption in NRC licensing proceedings. See 10 CFR 50.47(a)2 and generally FEMA/NRC Memorandum of Understanding, 45 FED. REG. Sec. 2713, December 16, 1984 and Southern California Edison Company et al(San Onofre Nuclear Generating Station, Unit 1 and 2) ALAB-690, 16 NRC 127 at 349 (1982). Therefore, the Board's assertion that "according to FEMA it is successful", see Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, page 11, is inaccurate. The inmates respectfully request the right to rebut the findings of FEMA especially in light of the new regulation cited previously. Thus, the inmates contend that this issue should be more fully litigated.

##### 5. Panic Factor

The inmates once again contend that the Board has put the proverbial cart before the horse with respect to the panic issue. The inmates in their proposed revised contentions documented several previous disturbances at the State Correctional Institute at Graterford that caused considerable concern,



monetary expense, anxiety, and manpower mobilization. These similar situations should not be rejected out of hand by this Board. These instances will show the difficulty that the Department of Corrections faces when confronted with such emergencies and will indicate the responses available to the institution in the event of such an emergency. Therefore, the inmates contend that they have provided sufficient evidence of the potential for panic necessary to create a specific basis for this contention.

The inmates draw the Appeal Board's attention to the Board's statements on page 15 of their decision admitting certain contentions and denying others, in which they state, "We assume (a) the guards will do their duty; and (b) that the inmates will be restrained from evacuating spontaneously." The inmates contend that such statements represent conclusions of law which can only be made after a full hearing on the issue. The inmates, as mentioned in the previous section, claim that the Licensing Board cannot now judge the merits of their claims. Clearly, such statements as the guards will do their duty and the inmates will be restrained from evacuating spontaneously, draw the conclusions far in advance of a proper evidentiary foundation being provided. Thus, the inmates contend that the rejection of their contention is premature.

C. The Radiological Emergency Response Plan for the State Correctional Institute at Graterford Fails to Provide a Reasonable Assurance that Civilian Personnel Involved in the Plan Will Be Sufficiently Trained So As To Carry Out Their Assigned Responsibilities in the Event of a Nuclear Emergency at the Limerick Generating Station.

The Radiological Emergency Response Plan for the State Correctional Institute at Graterford relies upon the use of certain civilian personnel. These civilians will be utilized to complement the manpower necessary to conduct an evacuation of the prison in the event of a nuclear emergency at the Limerick Generating Station. These civilians will be used to drive the buses which will transport the inmates from SCIG to a relocation site. They will be coming from as far away as 190 miles and will be employees of private bus companies. Other civilians will be used to drive the ambulances which will transport sick and/or injured individuals to hospitals equipped to deal with such problems. Due to the fact that such civilian employees could be expected to remain in the ten mile EPZ for up to ten hours after a nuclear emergency has been declared, training in basic radiological principles will be offered to these civilians. The issue which was brought before the Licensing Board during the hearings of July 15, 1985 involves the training the civilian employees will undergo. Planning Standard 0 of NUREG 0654 calls for radiological emergency response training to be provided to those who may be called on to assist in an emergency. Subsection 0.1 provides that "each organization shall assure the training of appropriate individuals." In this matter, the organization that has been charged with this responsibility is the Pennsylvania Emergency Management

Agency, also known as PEMA. (See Taylor Tr. 20,856.) Thus, the issue becomes whether PEMA can provide a reasonable assurance that radiological emergency response training will be provided to the civilian personnel which will be utilized in the evacuation of Graterford.

The inmates contend that PEMA has failed to meet its burden of providing a reasonable assurance that such training will be given to civilian employees. To date, one letter, which is attached as Exhibit "2", was sent to six bus driver companies on April 4, 1985. The sending of this letter represents the only affirmative action that has been taken with respect to this issue. To date, there has been absolutely no response of any kind from any of the potential bus provider companies. The inmates contend that this lack of a response is indicative of their allegation that said training will not in fact occur. In support of their contention, the inmates offered the expert testimony of Major John Case, who is currently the Field Director of the Pennsylvania Prison Society. Major Case spent 22 years in the United States Marine Corps where he achieved the rank of major. He also was the warden and director of the Bucks County Department of Corrections for 12 years. Major Case testified that there exists a need for a financial incentive to encourage these civilian bus drivers to take the training offered. (See Case deposition, pp. 40 through 41 and Tr. 20,951 and 20,938 through 20,939.) PEMA, through the testimony of Don Taylor, stated that he could not address the issue of whether financial incentives will be used to encourage participation of bus drivers. (See Taylor Tr. 20,863 through 20,864.) A FEMA witness stated that motivation was not a concern with respect to training of civilian personnel. (See Asher Tr. 21,001.) Mr. Taylor

further stated that the fact that the civilian personnel will be utilized to evacuate a maximum security prison makes absolutely no difference to him or to the type of training that will be offered. (See Taylor Tr. 20,860.) Mr. Taylor also testified that to date no training has been offered to civilian ambulance drivers. (See Taylor Tr. 20,879.) He also stated that there was no need to offer the bus drivers training in inmate custody and control. (See Taylor Tr. 20,860.) It is the inmates' contention that PEMA and FEMA are only concerned with the offer of training and are unconcerned as to whether the training will occur. The inmates contend that the Criterion, O of NUREG 0654 calls for an assurance that said training will in fact be given. As was previously mentioned, each organization is charged with assuring the training of appropriate individuals. (See Asher/Kinard Tr. 20,995.) It does not state that each organization shall assure that training of appropriate individuals will be offered. Given the dangerous nature of their assigned responsibilities, i.e., evacuation of a maximum security prison during a nuclear emergency, and offer of training is insufficient. There must be some assurance that said offer will be accepted. To date, there has been none.

It is the inmates' contention that FEMA is charged with the responsibility of providing a reasonable assurance that the civilian personnel will receive adequate training with respect to radiological emergency responsiveness. (See 10 CFR 50.47(a).) FEMA's closing remarks indicated, however, a concern only as to the offer of training and not the assurance that the appropriate individuals would be trained. (See Hirsh Tr. 21,017.) PEMA is the organization responsible for the training of such individuals. (See Asher/Kinard Tr. 20,995.) The

inmates contend that the burden falls upon PEMA and FEMA to prove that reasonable assurances exists that such training will occur. (See Consumers Power Company (Big Rock Point Plant) 16 NRC 1096 (1982).) Major Case, when asked what information he has to indicate there would be a lack of cooperation of bus drivers by NRC staff counsel, stated "I have no information to indicate there would be a lack of cooperation of bus drivers. The only information I have is a lack of information as to what training would be provided, and therefore on that, I base an assumption that the bus drivers would be uncooperative." (See Tr. 20,951 through 20,952.). Major Case went on to state, "I have heard nothing to indicate that -- I have heard nothing or read nothing to indicate that the private bus drivers would have a reason to cooperate. The testimony of Mr. Taylor indicates that letters were written to six different bus companies and he has received no response. It would seem to me, in my experience, as a troop leader, as a leader of men; men motivated by various things; compassion, love of their fellow man, patriotism, and monetary reward. None of which has been indicated to me that the bus drivers have been given any reason to think that it would be within their best interests to move to Graterford and move the inmates." (See Tr. 20,951.) The inmates contend, based upon this testimony, that a reasonable assurance that training will occur has yet to be provided and that PEMA and FEMA have failed to carry their burden with respect to this issue.

PEMA has suggested that it will make attempts in the future to encourage the bus companies to get involved in the training that has been offered. (See Taylor Tr. 20,856, 20,863, 20,877.) Mr. Taylor has also stated that it is his



belief that the training is not essential to the civilians' ability to function during a nuclear emergency. (See Taylor Tr. 20,874.) In doing so, he has substituted his judgment for the planning Criterion O of NUREG 0654. The inmates point out that if Mr. Taylor does not believe in the necessity for training, how can he be expected to encourage the drivers to participate in such. Thus, the inmates have serious reservations about any future efforts by PEMA to encourage drivers to participate in said training. For these reasons, the inmates respectfully request that this Appeal Board rule that no reasonable assurances have been offered that civilians will be trained in radiological emergency responsiveness.

D. There is No Reasonable Assurance that the Methodology Utilized to Compile the Estimated Time of Evacuation is Sufficiently Reliable so as to be Utilized as a Decision Making Tool During a Nuclear Emergency.

NUREG 0654 Appendix 4, states the need the compiling an estimated time of evacuation for everyone within the ten mile emergency planning zone surrounding a nuclear power plant. Appendix 4 goes on to discuss the methodology which should be utilized in obtaining the estimated time of evacuation. It also states that special facility populations should be considered on an institution by institution basis. (See NUREG 0654 Appendix 4, paragraph II C. pp. 4-3.) Thus, an individual ETE must be developed for each such special facility population. The Licensing Board has stated "that it is clearly reasonable to require preparation of a separate evacuation time estimate, which the Pennsylvania authorities have done and will rely upon for taking appropriate

protective actions." (See Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, at p. 10, June 12, 1985.) The Board further ruled that it admits "only that portion of these intervenors' allegations that deal with the sufficiency of the methodology used to arrive at the six to ten hour evacuation time. Whether the six to ten hour estimate is in the plan or not, does not require litigation. Reading of the plan will reveal its presence or absence. If absent, it will be inserted." (See Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others, supra at p. 9.) The issue before the Board was whether the methodology utilized to compile the ETE was sufficient so as to provide an adequate basis for planning appropriate protective actions for Graterford personnel. After hearings on this issue, the inmates' objections to the methodology presented by Superintendent Zimmerman are threefold. Initially, Superintendent Zimmerman's ETE differed from Commissioner Jeffes' ETE. A third ETE, which was offered some four years ago, provided a third estimated time frame. The inmates contend that the discrepancies that exist within the three different time estimates establish a prima facie case as to the unreliability of each and every ETE that has been compiled. The second objection to the methodology of the ETE concerns the many potential hazards that incoming and outgoing transportation and manpower mobilization vehicles will be confronted with when attempting to carry out their assigned responsibilities. The third concern involves the inmates' response to the emergency within the prison walls and what, if any, training they will receive prior to the granting of a full power license.

At the start of Superintendent Zimmerman's testimony, the inmates' counsel attempted to introduce a document which was identified as Graterford Inmates Exhibit No. 1, which indicated that an estimated time of evacuation study was submitted in July of 1980 which indicated that the evacuation time estimate for SCIG was five hours and thirty minutes under daylight conditions only. (See GI No. 1 and Tr. 20,891.) The Licensing Board rejected this information and refused to allow the exhibit to be entered into the record. A second estimated time of evacuation was developed by the Commissioner of the Department of Corrections, Glen Jeffes. Commissioner Jeffes' ETE was six to ten hours before the last prisoner is ready to leave. (See Zimmerman Tr. 20,770 and Tr. 20,769, and Applicant's First Exemption Request 1/31/85 Affidavit of E. Robert Schmidt and Jeffrey Kaiser, paragraph 13.) Superintendent Charles Zimmerman of the State Correctional Institute at Graterford, developed an independent analysis of the ETE and came up with a figure of eight to ten hours. (See Zimmerman Tr. 20,768 through 20,769.) Superintendent Zimmerman also testified that he was not involved in the compiling of the Jeffes' ETE. (See Zimmerman Tr. 20,769.) The plan itself fails to give any estimated time of evacuation. (See Zimmerman Tr. 20,770.) Major John Case testified that Superintendent Zimmerman's eight to ten hour estimate is based upon ideal conditions. (See Case Tr. 20,935.) Major Case also stated that his opinion was that the overall ETE could just as easily be twelve to twenty hours. (See Case deposition, p. 54.) The inmates contend that the submission of three different ETE's and the complete lack of coordination between the various individuals who comprised the three ETE's suggests that any of the three ETE's is unreliable. The lack of coordination

and cooperation between Superintendent Zimmerman and Commissioner Jeffes further points out a major potential flaw in any emergency radiological response planning if a nuclear emergency were to occur at the Limerick Generating Station. As has been previously stated, the goal of developing an estimated time of evacuation is to provide a reliable tool for decision makers when responding to a nuclear emergency. The inmates point out that Skippack Township, in which SCIG is located, has refused to approve an emergency response plan due to their unsatisfied concerns regarding the prison evacuation plans. (See Board's Third Partial Decision, No. 658, p. 293 and Giamo Tr. 19,073.)

With respect to the individual components of the overall estimated time of evacuation, the inmates would like to point out the following. It has been estimated by Superintendent Zimmerman that it will take two to four hours for the vehicles necessary to conduct the evacuation to arrive at SCIG under normal conditions. (See Zimmerman Tr. 20,803.) These vehicles will be coming from distances up to 190 miles away. (See Zimmerman Tr. 20,803.) Superintendent Zimmerman based his two to four hour estimate upon assurances from the Department of Corrections that the buses would be there in that time period. (See Zimmerman Tr. 20,846.) It is further Superintendent Zimmerman's opinion that any problems that could be caused by the corresponding public evacuation have not been considered in this ETE. (See Zimmerman Tr. 20,804.) He stated that the corresponding public evacuation from the EPZ will not effect the incoming vehicles at all. (See Zimmerman Tr. 20,803.) He further stated that he has no training in traffic engineering. (See Zimmerman Tr. 20,766.) The inmates presented the testimony of Robert Morris, a traffic control expert, who



seriously questioned whether the buses could arrive at SCIG from a distance of 190 miles within four hours. (See Morris deposition, p. 78.) It is also Mr. Morris' belief that road capacities would be seriously diminished in the event of an evacuation of the general public. (See Morris deposition, p. 42 and 79.) Mr. Morris also testified that accidents are bound to happen during the public's evacuation, further diminishing roadway capacities for incoming vehicles. (See Morris deposition, p. 42 and 79.) He stated that there is a potential for panic on the highways by members of the general public who could use shoulder lanes designated for emergency vehicles, or ingress routes if the normal routes of egress are blocked. (See Morris deposition, p. 42 and 79.) Radioactive fallout and wind conditions could close particular corridors or series of roads, further impeding entry and exit. (See Morris deposition, p. 60.) He also stated that the road capacity on the incoming routes, which the buses will use during entry, may be zero due to accidents, panic factor, and would certainly be less than 50 miles an hour. (See Morris deposition, p. 78, 79.) Mr. Morris further stated that in his opinion, a reliable ETE would take into account records of accidents on the roadways, the potential for panic, meteorological conditions of the region, and the potential for a corridor closing due to a radioactive release and prevailing winds. (See Morris deposition, p. 42 through 44.) A balancing of this testimony would indicate that Mr. Morris' estimates are more reliable than those offered by the Department of Corrections through Superintendent Zimmerman.

The inmates make the same argument with respect to the issue of manpower mobilization. Superintendent Zimmerman has stated that he expects the manpower,



i.e. the employees at SCIG, to be mobilized within a one to two hour time frame. (See Zimmerman Tr. 20,808.) The method to be utilized in activating the manpower is a call-up system. The call-up system has never been tested during an emergency which also involved the surrounding community, and is based upon reliance of the commercial telephone lines. (See Zimmerman Tr. 20,809.) The inmates have presented testimony that the commercial telephones may not be able to respond to the call-up system needs. (See Morris deposition, p. 80.) Prior testimony in this proceeding indicated that there was a dial tone delay of up to thirty minutes in duration during the floods resulting from Hurricane Agnes in 1972. (See Brown Tr. 18,226.) A previous Licensing Board has reasoned that "during an emergency the commercial telephone circuits, including those serving the schools, likely would become overloaded as a result of heavy public usage and thus be unavailable for personal use." (Cincinnati Gas and Electric Company, et al (William H. Zimmer Nuclear Power Station, Unit 1) Docket No. 50-358; 17 NRC 760 (1983).) For these reasons, the inmates believe that the Commonwealth, through the Department of Corrections, has failed to meet its burden of providing a reasonable assurance that bus drivers and correspondingly their buses, will arrive within the two to four hour time frame suggested at SCIG and that the manpower can be mobilized within the one to two hour time frame suggested by Superintendent Zimmerman.

With respect to the components of the estimated time of evacuation which will occur within the walls of the State Correctional Institute at Graterford, the inmates point out the following. Superintendent Zimmerman testified that a lockdown of the institution in the event of a nuclear emergency can be achieved

within thirty minutes. (See Zimmerman Tr. 20,779.) Superintendent Zimmerman also testified that a lockdown under normal circumstances takes thirty minutes. (See Zimmerman Tr. 20,783.) Major John Case testified that without proper inmate training and orientation, a lockdown could take up to four hours. (See Case deposition, p. 28.) The inmates provided documentation as to prior lockdown situations at SCIG in order to prove their claim as to the unreliability of Superintendent Zimmerman's thirty minute lockdown time estimate. A power failure which occurred on September 12, 1983 resulted in a lockdown time of four to six hours. (See Zimmerman Tr. 20,781 and Graterford Inmates Exhibit No. 2.) A second power failure, which occurred on February 23, 1984, resulted in a lockdown time of two hours. (See Zimmerman Tr. 20,800.) Superintendent Zimmerman reasoned that the lack of emergency lighting caused the additional time delay. However, another lockdown which occurred during the hostage seige of October 1981, could not be completed for over two hours due to small groups of inmates not returning to their cells because there was no functioning loudspeaker to communicate instructions. (See Zimmerman Tr. 20,788 and Graterford Inmates Exhibit No. 3.) The inmates contend that these prior instances, when combined with the expert testimony of Major Case, indicate a much longer time frame than the usual thirty minutes and should be considered. Superintendent Zimmerman stated that he will add an addendum to an inmate handbook offering the inmates knowledge of the evacuation process. This idea was developed in the past few weeks after Major Case suggested in his deposition on July 1, 1985 that it would be good policy to orientate the inmates as to the nature of the evacuation process. (See Zimmerman Tr. 20,834 and Case deposition

p. 28.) Major Case also testified that it would be good policy to have the inmates participate in a drill to test preparedness. (See Case Tr. 20,943.) This policy would have a much greater impact than Superintendent Zimmerman's planned addendum for the inmate handbook for the following reasons. The illiteracy rate at SCIG is approximately 60%. Another 10% of the population is Spanish speaking. The inmate handbook is not read to individuals upon orientation. For these reasons, the inmates contend that the proposed addendum by Superintendent Zimmerman will be inadequate to achieve the desired result.

Finally, the inmates point out that the population estimate utilized to develop the plan was 2,450 inmates. The population has already risen to 2,500. (See Zimmerman Tr. 20,837.) Admissions to the state prison system have risen 38% between 1979 and 1982. (See Zimmerman Tr. 20,829 and Graterford Inmates Exhibit No. 5.) SCIG has plans for an additional 500 cell facility to be constructed by 1988. (See Zimmerman Tr. 20,830.) The inmates contend that prior population increases are expected to continue and to run well ahead of additional capacity. (See Graterford Inmates Exhibit No. 5, p. 3.) Despite this information, Superintendent Zimmerman testified that he expects no further increases in the population at SCIG, even when the new 500 cell facility is opened. (See Zimmerman Tr. 20,830.) The inmates find such assertions hard to believe. With an addition of 500 cells and with the projected growth rates of the Graterford Inmates Exhibit No. 5, an increase has already occurred and will continue to occur, rendering much of the current plan inadequate. For these reasons, the inmates contend that the methodology utilized in the development of the estimated time of evacuation is inconsistent and inadequate to provide a

reasonable assurance that the ETE can be relied upon in the decision making process.

E.. The Inmates Fail to Receive Their Right to a Fair and Impartial Tribunal as Guaranteed by 10 CFR 2.718.

The inmates contend that they were denied their right to a fair and impartial hearing according to law. The basis for their contention that they are entitled to such a hearing can be found at 10 CFR 2.718. This section which recites the power of the presiding officer states, "A presiding officer has the duty to conduct a fair and impartial hearing according to law...". The inmates also cite the Fifth and Fourteenth Amendments of the United States Constitution which guarantee due process rights to the individual, including the right to a fair and impartial tribunal. (See Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974); Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593 (1972).; Rhodes v. Robinson, 612 F.2d 766, 773 (3d Cir. 1979); Edwards v. White 501 F.Supp. 8 (MD PA 1979), and Powell v. Ward, 487 F.Supp. 917 (SD NY 1980).) The inmates hereby incorporate by reference Section II. Procedural History of this Brief. As the Procedural History indicates, the inmates have faced many hurdles in their attempt to present testimony that the Radiological Emergency Response Plan for Graterford fails to provide a reasonable assurance as to their safety. Despite entering the case in September of 1981, no action on the issue occurred until over three years later on December 14, 1984, when the first version of the Radiological Emergency Response Plan was made available to inmates' counsel. From that point on, the inmates had to take three appeals of Licensing Board decisions in order to obtain the hearing rights granted to them under the

regulations of 10 CFR 50.47 and 10 CFR 2.714. The initial appeal concerned the issue of disclosure. Despite assertions by the chairman of the Licensing Board as to the unintelligible nature of Plan 1, requests for further disclosure were rejected summarily. (See Tr. 20,432, 20,468, 20,474, 20,640 and Board's Oral Ruling of January 29, 1985 at Tr. 20,479 through 20,481.) After a successful resolution of the disclosure issue, the inmates were once again met by a hostile Licensing Board that refused to allow the inmates to revise their contentions based upon the new information available in Plan 2. (See Licensing Board Memorandum and Order of April 12, 1985, p. 4, note 4 and note 15.) The Licensing Board further suggested in the same document that such agencies as the Pennsylvania Emergency Management Agency and the Department of Corrections had sufficient familiarity with the inmates so as to represent their interests in this proceeding. (See Licensing Board Memorandum and Order of April 12, supra at 12.) The inmates take exception to the characterization that their custodians will, in fact, be sensitive to their safety concerns in the event of a nuclear emergency. It is the inmates' contention that they themselves are the best representatives of their interests. They note, as did the Appeal Board, that the relationship between the inmates and the Department of Corrections is essentially an adversarial one. (See Decision of the Atomic Safety and Licensing Appeal Board, May 1, 1985, at 16.) The order of April 12, 1985 dismissing the inmates as a party to the proceeding necessitated a second appeal which was successful as the Atomic Safety and Licensing Appeal Board reinstated the inmates in its order of May 1, 1985 and gave them fifteen days to file their revised contentions. Just as the inmates were readying the final draft of these



refiled contentions, the Licensing Board once again thwarted their efforts by granting the applicant an exemption from the Graterford issue in order to achieve full power status at the earliest opportunity. As noted previously, the Licensing Board characterized any deficiencies in the plan as "insignificant". Clearly, the expressed opinions with respect to the issues before them prior to the appropriate time and prior to listening to the testimony provided by inmates' experts. The inmates once again appealed this decision and once again were successful as the Nuclear Regulatory Commission in its order of June 11, 1985, stated its concern with respect to the "hearing rights of the Graterford inmates". Only after this directive from the Nuclear Regulatory Commission itself did the Licensing Board admit two portions of the eight revised contentions. The inmates contend that the Licensing Board rejected their stronger issues in favor of an issue which could be easily expedited at the hearing level.

With respect to the hearings of July 15, 1985, the inmates again contend that they were denied their right to a fair and impartial tribunal. Initially, the inmates point to the Licensing Board's issuance of a subpoena for a potential witness, Robert Morris, of the Graterford inmates, despite being told that Mr. Morris had yet to make a decision as to whether he would testify and if he did decide he would be available on July 3, 1985 for a possible deposition. The applicant expressed a concern that one of their attorneys had a prior commitment with the Delaware River Water Basin and thus said date was unavailable. Despite assurances by inmates' counsel that the witness would be available prior to the expiration of the time period for conducting depositions

and filing pretrial testimony, the Licensing Board issued the subpoena. Further evidence of the lack of impartiality by the Licensing Board can be found in Tr. 20,809 through 20,811, when the Licensing Board solicited an objection from the Governor's Energy Council and sustained said objection despite the reluctance of said counsel to object. The matter at issue was the call-up system previously discussed in this brief. Superintendent Zimmerman testified that the manpower mobilization could be achieved in one to two hours. The triggering mechanism for the manpower mobilization was the telephone call-up system. When asked to explain the call-up system, Chairman Hoyt interrupted the proceeding and urged that an objection be made. She then continued to persist in her insistence that no discussions would be made with respect to the call-up system, despite the fact that Superintendent Zimmerman had put its viability in issue on the record. The inmates contend that a review of the entire proceeding to date indicates an inherent hostility on the part of the Licensing Board to the inmates, their counsel and to each and every issue they have brought before this Court. Without the help of the appellate process and cooperation among parties, with the exception of the applicant, this matter would still at best be in the early stages of developing a sound record.

The inmates also note that numerous procedural guarantees of Chapter 10 of the Code of Federal Regulations were denied by the Licensing Board to the inmate intervenors. 10 CFR 7.443 regarding evidence, subsection (b) states that copies of proposed written testimony should be served on other parties at least fifteen days in advance of the hearings. In this instance, the inmates were given a deadline of July 8, 1985 to offer proposed testimony, seven days prior to the

beginning of the hearings. The expedited schedule further hindered the inmates' ability to conduct limited discovery prior to the hearings. The inmates cite 10 CFR 2.740 with respect to the discovery rules. The inmates note that they did request information regarding seven prior lockdown situations at the State Correctional Institute at Graterford and only received documents pertaining to one said incident. Due to the expedited schedule, dictated by the Licensing Board, the inmates had no opportunity to exercise their rights to compel discovery under 10 CFR 2.740(f). The inmates also contend that the Licensing Board failed to pay heed to the mandate of 10 CFR 2.735 regarding the burden of proof which should fall upon the applicant or the proponent of an order. Finally, the inmates note that 10 CFR 2.745, Proposed Findings of Fact and Conclusions of Law, indicates that a party shall have thirty days after the record is closed to file Proposed Findings of Fact and Conclusions of Law. The Licensing Board indicated in its initial telephone conference of June 18, 1985, which was memorialized by an order of June 19, 1985, that arguments and findings would be given at the close of the hearings. When the hearings did in fact close, the inmates were given approximately 23 hours to submit said Findings of Fact and Conclusions of Law. The inmates' counsel did so as instructed, however, objects to this expedited schedule and claims that said decision is further evidence of the partiality of the Licensing Board and of their primary concern to dispose of the Graterford inmates in any way possible.

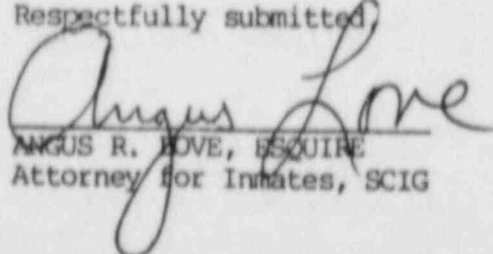
#### IV. CONCLUSION

Over the past several years, the inmates have attempted to bring to the attention of the Nuclear Regulatory Commission their concerns as to their safety in the event of a nuclear emergency at the Limerick Generating Station. Their efforts initially were met with three years of silence. After this three year period, they have been confronted with six months of procedural maneuvering aimed at denying them their rights to a hearing as lawful intervenors in the above-captioned licensing process. Only after a directive was issued by the Nuclear Regulatory Commission did the inmates receive a limited opportunity to put forth their issues with respect to safety. The inmates' issues were bolstered by the efforts of two volunteer experts, Major John Case, Field Director of the Pennsylvania Prison Society and Robert Morris, a traffic control expert from Potomac, Maryland. The hearing opportunities that were afforded the inmates represented a cursory review of the issues put forth by the inmate intervenor. The inmates rely upon common sense and legal precedent in their assertion that the Department of Corrections has failed to provide a reasonable assurance that civilians will be trained properly for this most difficult task. The inmates further contend that the methodology presented by Superintendent Zimmerman as to the estimated time of evacuation conflicts with two prior estimates, delegates authority for certain portions of the plan to persons who did not testify, and bases his assumptions upon ideal conditions. Due to the unique nature of this issue, which involves the juxtapositioning of a maximum security state prison with a nuclear power facility, the inmates contend that a cursory review is inadequate. The inmates further request that this Appeal

Board review this matter in its entirety; that this Appeal Board give serious consideration to the contentions that were previously rejected, and to give the weight it is due to the expert testimony provided by the inmates' experts.

The inmates note that there are many parties involved in this proceeding. The inmates also note that many of these parties have vested interest in the outcome of this issue. These interests are separate and apart from the only interest which should be the basis for the decision making process, which can be found at 10 CFR 50.47, which requires that a reasonable assurance be provided as to the health and safety of the public prior to the issuance of a full power license. The inmates note that the applicant has already spent 7.23 billion dollars in construction of the Limerick facility and is anxious to recoup their investment at the earliest possible time. The Commonwealth of Pennsylvania, Governor's Energy Council, and the Department of Corrections all had hand in the development of the Radiological Emergency Response Plan for Graterford and thus cannot be expected to render an impartial view as to the particulars of their plan. The Federal Emergency Management Agency, as stated in their closing argument, is only concerned that an offer of training be made. The Pennsylvania Emergency Management Agency was also inextricably involved in the development of the emergency plans. The Licensing Board that sat in judgment of these issues has a track record of hostility to the inmates' concerns and could not be expected to perform their assigned duty of providing an impartial tribunal. For these reasons, the inmates turn to this Appeal Council and request that a decision be entered in their favor with respect to the seven issues that they have brought before the Nuclear Regulatory Commission.

Respectfully submitted,

  
ANGUS R. LOVE, ESQUIRE  
Attorney for Inmates, SCIG





PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY  
P.O. BOX 3321  
HARRISBURG, PENNSYLVANIA 17105-3321



THIS LETTER IS ONE SENT TO ALL BUS COMPANIES PROVIDING THE  
DEPARTMENT OF CORRECTIONS WITH BUSES.

Gentlemen:

Some of your employees may be involved in driving buses carrying inmates from the State Correctional Institution at Graterford in the event of an accident at the nuclear generating plant located in Limerick, Montgomery County. Because of this possibility, these drivers may want to take some training regarding the proper use of dosimetry.

The Pennsylvania Emergency Management Agency (PEMA) hereby offers to you and your employees a 2-hour course explaining the proper use of dosimetry. We are prepared to conduct this course at a location and time to be selected by you and your employees. We ask only that you coordinate this scheduling with us to avoid any conflicts with our regular schedule of activities.

You may write to me at the address listed above, or you may telephone me at 717-783-8150.

With kind regards, I am

Sincerely,

Donald F. Taylor  
Director  
Office of Training and Education

DFT:tjl (Tel: 717-783-8150)

Exhibit "A"

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of : '85 AUG 16 A10:44  
PHILADELPHIA ELECTRIC COMPANY :  
(Limerick Generating Station :  
Units 1 and 2) : Nos. 50-352 and 50-353

DOCKETED  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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 BRIEF OF THE INTERVENOR GRATERFORD INMATES was mailed to the following list by first class mail, postage prepaid on August 14, 1985.

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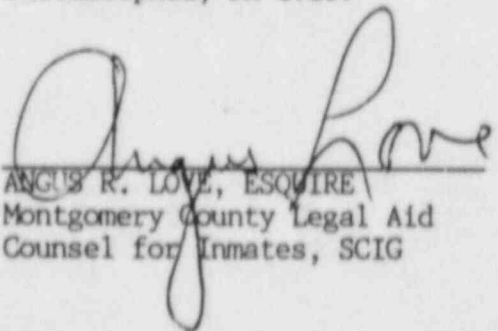
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