

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-352 OL  
50-353 OL

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,  
Units 1 and 2)

ORIGINAL

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE  
ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of: :  
PHILADELPHIA ELECTRIC COMPANY : Docket No. 50-352 OL  
 : 50-353 OL  
(Limerick Generating Station, :  
Units 1 and 2) :  
-----X

Nuclear Regulatory Commission  
4350 East-West Highway  
Fifth Floor Hearing Room  
Bethesda, Maryland

Wednesday, December 4, 1985

The oral argument in the above-entitled matter convened  
at 2:00 p.m.

BEFORE:

CHRISTINE KOHL, Chairman  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C.

GARY EDLES, Member  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C.

DR. REGINALD GOTCHY, Member  
Atomic Safety and Licensing Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D. C.

## 1 APPEARANCES:

2 On behalf of the Applicant:

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11 Deputy Director, Plans & Preparedness  
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Harrisburg, Pennsylvania14 On behalf of Graterford Correctional Institution  
15 Inmates:16 ANGUS R. LOVE, ESQ.  
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18 On behalf of the Nuclear Regulatory Commission:

19 JOSEPH RUTBERG, ESQ.  
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22 Office of the Executive Legal Director  
U. S. Nuclear Regulatory Commission  
23 Washington, D. C. 20555

24 ALSO PRESENT:

25 FRANK ROMANO, Pro Se

P R O C E E D I N G S

MS. KOHL: Please be seated. Good afternoon, I'm Christine Kohl. To my right is Gary Edles. On my left is Dr. Reginald Gotchy. We are hearing oral argument this afternoon on the appeal of a number of inmates at the State Correctional Institution at Graterford, Pennsylvania, from the Licensing Board's fourth partial initial decision in connection with the operating license application for the Limerick nuclear power plant.

That decision concerns the adequacy of the emergency plan for the Graterford facility, which lies within the emergency planning zone for Limerick.

Our October 24th order set the amount of oral argument time for each party and the order of presentation. Because one of the other appellants, Air and Water Pollution Control, has failed to appear today, the inmates counsel may, but need not, use the 15 minutes that we had previously allotted to AWPC.

Beginning with Intervenor's counsel, I would like all counsel to identify themselves for the recorder at this time. Mr. Love?

MR. LOVE: Angus Love, appearing on behalf of the Graterford inmates.

MS. KOHL: Mr. Love, how much time do you plan to reserve for rebuttal?



1 MR. LOVE: Ten minutes, please.

2 MS. KOHL: Thank you.

3 MS. FERKIN: My name is Zori Ferkin and I  
4 represent the Commonwealth of Pennsylvania. With me is  
5 Mr. Ralph Hippert who is with the Pennsylvanian Emergency  
6 Management Agency.

7 MR. RADER: My name is Robert Rader; Conner &  
8 Watterhahn; we represent the Licensee, Philadelphia  
9 Electric Company.

10 MR. RUTBERG: I'm Joseph Rutberg with the NRC  
11 Staff. With me at the table is Lawrence Chandler, special  
12 litigation counsel, also with the Staff.

13 MS. KOHL: Thank you. Mr. Love, would you like  
14 to begin?

15 MR. LOVE: Yes. My purpose in coming before  
16 this panel today is in the hope of contributing to the  
17 development of a sound and workable radiological emergency  
18 response plan for the State Correctional Institute at  
19 Graterford, Pennsylvania. Although I represent the inmate  
20 voice in this matter, we think a viable plan is in the best  
21 interests of the inmates, the employees of Graterford, and  
22 the public alike.

23 For the first time in a licensing proceeding  
24 before the Nuclear Regulatory Commission, a maximum  
25 security prison is located within the 10-mile emergency

1 planning zone and thus must be capable of responding  
2 appropriately to a nuclear emergency. We believe that the  
3 development of the response represents a challenge to all  
4 concerned, and gives one much food for thought.

5 While some progress has been made in addressing  
6 certain concerns and narrowing certain issues, much remains  
7 unresolved. For reasons that escape me, these proceedings  
8 have run a long, turbulent and often bitter course. Only  
9 with the assistance of this panel and the Commission itself  
10 was the issue allowed to proceed in its traditional  
11 framework as outlined in 10 CFR, rules of practice for  
12 domestic licensing proceeding.

13 The matter began on September 18, 1981 with the  
14 filing of a petition by the National Lawyers' Guild for  
15 intervention on behalf of the Graterford inmates.

16 MS. KOHL: Mr. Love, the panel is very much  
17 aware of the procedural background of the case. Perhaps  
18 the best use of your time would be to get to your issues on  
19 appeal.

20 MR. LOVE: One of the issues that I raised  
21 regards the bias of the Licensing Board. So, if you will  
22 just bear with me, I would just like to briefly recite some  
23 initial problems that did occur, that we believe raise an  
24 inference of bias on the part of the Licensing Board.

25 MR. EDLES: Let me ask you, if I may, to address

1 the argument made by others that you never sought to  
2 disqualify either the Licensing Board, in its entirety, or  
3 any of its members for bias. And you now -- aren't you a  
4 little late in the game to be challenging them for bias?

5 MR. LOVE: I don't believe that's the one and  
6 only way that one can suggest bias on the part of the panel.  
7 I believe that the more traditional aspects of the due  
8 process requirements of the 5th and 14th amendments of the  
9 United States Constitution regarding notice, opportunity to  
10 be heard, a fair and impartial tribunal and a reasoned  
11 decision also apply in this instance. And we are relying  
12 upon those and the similar provisions in 10 CFR.

13 MR. EDLES: But even as to those provisions,  
14 there is an obligation on a party's part to make the claim  
15 of bias in a discrete fashion and as promptly as possible  
16 after the bias arises.

17 When did the bias supposedly arise and what is  
18 precisely the basis of the bias that you are now raising  
19 for the first time?

20 MR. LOVE: Well, briefly stated, after this  
21 initial filing and accepting as Intervenor, there was a  
22 three-year period when nothing happened.

23 MS. KOHL: But your clients weren't injured by  
24 that delay?

25 MR. LOVE: In a sense, when our first finally

1 did come up, it was more or less under the gun in that we  
2 were forced into an expedited schedule and matters had to  
3 move along rather quickly when we finally did get to a  
4 hearing stage. If the matter had been brought up in the  
5 normal course of the proceedings, far before the end of it,  
6 we feel we would have gotten more of an opportunity and  
7 could have brought more persons in and presented additional  
8 evidence.

9 MS. KOHL: Could you be more specific in that  
10 regard, as to how you were prejudiced by the expedited  
11 hearing schedule?

12 MR. LOVE: Well, two points that we were  
13 concerned with. One, we wanted to get an inmate voice on  
14 the record. We attempted to have Thomas Martin, who is one  
15 of the more concerned inmates who followed this thing  
16 rather closely, we wanted to get some statements on the  
17 record from him.

18 During the June 17th conference of this year, a  
19 telephone conference call, the Licensee agreed to depose  
20 Mr. Martin and that solved, or hopefully was going to solve  
21 some of our problems with respect to getting Mr. Martin's  
22 testimony on the record.

23 MS. KOHL: This all sounds like a new issue. I  
24 don't remember reading anything in your brief on appeal  
25 that deals with Mr. Martin's possible participation.

1 MR. LOVE: Well, there was quite an extensive  
2 discussion on the record during the hearings.

3 MS. KOHL: Am I right that there's nothing in  
4 your brief on appeal?

5 MR. LOVE: The section on bias, I don't  
6 specifically recall if I mentioned Mr. Martin's name in  
7 that section. However I feel it does apply and it's one of  
8 the many things that the expedited hearing schedule  
9 hindered, our opportunity to put his testimony on the  
10 record.

11 After there was an agreement as to the  
12 deposition, there was a change of thinking on the part of  
13 the licensee, who didn't take the deposition. I then  
14 submitted a statement prior to the deadline for preoffered  
15 testimony from Mr. Martin. However the Licensing Board  
16 refused to grant -- to allow that statement into the record.

17 I then asked if they would go to Graterford to  
18 hear Mr. Martin. They turned down that request. And  
19 previous to that I made several attempts to have a limited  
20 appearance schedule at the prison but it was denied.

21 MR. EDLES: My recollection is the same, that  
22 none of this was raised in your brief --

23 MR. LOVE: Specifically about Mr. Martin's  
24 deposition, I presume you're right in that regard.

25 MS. KOHL: There's another aspect of this and



1 that's that the other parties haven't had a fair  
2 opportunity, to which they are entitled as well, to respond  
3 to that. This comes out of the blue and people, including  
4 us, that did not -- was not included within our preparation  
5 for the argument today.

6 So there is an element of unfairness in  
7 attempting to raise something new and to flesh out your  
8 brief through oral argument.

9 MR. LOVE: Fine, I'll move onto a second point,  
10 then, with respect to this issue.

11 Another concern that the inmates had was  
12 regarding the discovery that took place prior to the  
13 hearings in July. As I stated, there was an expedited  
14 schedule agreed to on the June 17th hearing, and I  
15 immediately sent forth some requests for discovery to the  
16 Bureau of Corrections in the name of Theodore Otto, their  
17 counsel. These discovery requests involved prior incidence  
18 of emergencies that occurred at Graterford. I was  
19 attempting to see how the institution dealt with previous  
20 emergency situations, in an attempt to better understand  
21 how they could deal with future situations.

22 What I got back was very, very -- had very  
23 little semblance to the information I was looking for.  
24 Primarily I asked for logbook entries that are kept by the  
25 institution on the various cell blocks on the various

1 occasions, detailing all the events of the day. I  
2 requested them for certain dates when previous disruptions  
3 had occurred; however, I only got the information I was  
4 looking for in the form of a letter with regard to one of,  
5 I believe seven, incidents that I had raised, where prior  
6 disruptions had occurred.

7 I then sent another letter to Mr. Otto, which  
8 was over a week before the hearings were scheduled; however,  
9 he claimed that he never got the letter or when the hearing  
10 started he claimed he didn't get it. However, miraculously,  
11 toward the end of the hearing the letter did appear on his  
12 desk. So I did submit that, I believe, as Graterford  
13 Inmates' Exhibit 4 at the time. And I believe that --

14 MR. EDLES: I'm not following the claim of error  
15 here. What's the mistake?

16 MR. LOVE: It was a question of discovery. The  
17 expedited schedule -- if I recall 10 CFR regulations with  
18 respect to discovery, there are several time frames that  
19 are outlined when one can request discovery and then object  
20 if it doesn't come forth. I was more or less out in the  
21 cold in that none of these time frames could be fit into  
22 the schedule as we had it, which was maybe 2-1/2 weeks long  
23 for the entire discovery process.

24 MS. KOHL: But, Mr. Love, don't the regulations  
25 also give licensing boards some discretion and flexibility

1 in a situation where expedition is required, or called for,  
2 so that those time limits that are set forth in the rules  
3 can be adjusted in appropriate circumstances?

4 MR. LOVE: I agree with you and I understand  
5 fully what you are saying. However, when you say  
6 expedition is required, when you look at the three-year  
7 delay that took place prior to our entry in this case, we  
8 feel that the requirement of an expeditious hearing is  
9 being held against us. Because we have been ready to  
10 proceed with this case since 1981.

11 DR. GOTCHY: Applicant, though, you are claiming  
12 is not to be blamed for that delay?

13 MR. LOVE: I don't believe the Applicant is. I  
14 don't really know why, to be honest with you, why there was  
15 a three-year delay in receipt of the plan.

16 MS. KOHL: Let's try and focus more specifically  
17 on what you didn't get during the expedited discovery time,  
18 that you believe you would have gotten had the usual amount  
19 of time been provided.

20 MR. LOVE: Primarily, we were looking for the  
21 lockdown times.

22 MS. KOHL: Was that denied to you because of a  
23 time factor or was that information denied to you for other  
24 reasons? In other words, did --

25 MR. LOVE: Initially it was claimed that it

1 didn't exist.

2 MS. KOHL: All right. So that had nothing to do  
3 with how much time was provided for discovery.

4 MR. LOVE: Correct. However, I then followed up  
5 a letter detailing -- they thought I meant a logbook for  
6 the entire institution. I then clarified it in that there  
7 were logbooks for each specific cell blocks, there being  
8 five cell blocks, and requested that information.

9 MS. KOHL: What answer did you get to that?

10 MR. LOVE: The answer on the first day of the  
11 hearings was that that information was never received by  
12 them and later on they did admit it; however, it was mailed  
13 over a week prior to the beginning of the hearing.

14 MR. EDLES: Did you finally get the logbooks?

15 MR. LOVE: I never got the logbooks. I did  
16 obtain information of the lockdown time regarding three of  
17 the seven incidents that I had raised.

18 MS. KOHL: Was any of that, then, used for your  
19 presentation?

20 MR. LOVE: Yes, it was.

21 MS. KOHL: Why, was the additional material that  
22 was not provided to you anything other than cumulative?

23 MR. LOVE: Well, for example, two of the three  
24 lockdowns involved a power outage, and the superintendent  
25 testified that, under today's circumstances, the power

1 outages would have not caused the disruption they caused,  
2 because there's now an emergency lighting system in place.  
3 So he reasonably explained the delays in those two  
4 instances the third instance. The hostage seizure of 1981,  
5 he was not the superintendent of the institution at that  
6 time and he had no knowledge of that incident. So there  
7 was -- he was able to rebut or at least come up with an  
8 explanation for the lack of information with respect to  
9 those three incidents. But there were several more that I  
10 had raised: A death of a correctional officer in '79 --

11 MR. EDLES: What was the explanation offered for  
12 why those other four were not made available?

13 MR. LOVE: As I stated first, Mr. Otto said  
14 there was no such thing as logbook entries --

15 MR. EDLES: Then you said, during the course of  
16 the hearing you did get three of them. You got information  
17 regarding three of the incidents. But not --

18 MR. LOVE: One of them came from Mr. Otto and  
19 the others came directly from the superintendent.

20 MR. EDLES: So there was no explanation of why  
21 you didn't get the information?

22 MR. LOVE: I was told the letter was never  
23 received, which I found extremely hard to believe and then  
24 later it was told to me the letter was received, later on  
25 the in hearings.



1 MS. KOHL: What steps did you take to make sure  
2 the letter was received? Did you mail it express mail?  
3 Return receipt requested?

4 MR. LOVE: I didn't and certainly if I'm ever in  
5 this position again I will not rely on the regular mail,  
6 because it was two or three instances that the regular mail  
7 failed me. Although in all my other cases in almost 10  
8 years of experiences I have never run into some of these  
9 difficulties as I have in this instance.

10 MS. KOHL: Doesn't an expedited schedule call  
11 for the use of extraordinary means of communication anyway,  
12 just as a matter of prudence?

13 MR. LOVE: It makes sense now. I see that in  
14 retrospect, certainly.

15 MS. KOHL: In what other ways do you claim that  
16 the expeditious schedule prejudiced your client's interests?

17 MR. LOVE: As I said, in cutting short numerous  
18 deadlines, for example the finding of facts -- usually I  
19 think I have 30 days or something along those lines to be  
20 submitted.

21 MR. EDLES: But I went back and read that  
22 transcript citation, and my recollection is that the  
23 Chairman of the Board asked you if you had any problem with  
24 that and you said: No, I have no problem with the time  
25 limit.

1 MR. LOVE: Well, I did it.

2 MR. EDLES: Isn't that accurate?

3 MR. LOVE: I think I could have done a better  
4 job if I had more time. I don't see why we were forced  
5 into this situation.

6 MS. KOHL: The point is you didn't object at  
7 this time. As I recall the Staff counsel, when they were  
8 asked, the Staff counsel did indicate they had a problem  
9 with it. You were free to object at that time and by  
10 failing to do so, haven't you waived that argument on  
11 appeal?

12 MR. LOVE: Well, I don't believe so. But I'll  
13 leave that up to you.

14 Just one other point on this issue. I think  
15 also, I mentioned in some of my comments with respect to  
16 the merits, that we had been looking for some input from  
17 the correctional officers' union. However, this was  
18 rejected. But I noted that in prior contentions regarding  
19 school bus driver training and some other issues, union  
20 representatives were allowed to testify and I couldn't  
21 understand why we were seemingly held to a higher standard,  
22 in that the correctional officers' union was not allowed to  
23 be involved in this proceeding. And we feel, once again, due  
24 to the time constraints that we were operating under, that  
25 perhaps we were held to a higher standard than previous

1 individuals had been held to.

2 MS. KOHL: Mr. Love, though, with respect to the  
3 union officials who testified on other matters in this  
4 proceeding, my recollection is they testified once a  
5 contention was admitted. That is, at the oral hearing they  
6 were presented as witnesses and it was in that context and  
7 at that stage that their testimony was permitted to come in.

8 MR. LOVE: Correct.

9 MS. KOHL: Your contention, on the other hand,  
10 with respect to the union, wasn't even admitted for lack of  
11 basis and specificity. So aren't you talking about two  
12 entirely different things?

13 MR. LOVE: Well, I don't believe so, for two  
14 reasons. Although this particular contention -- you are  
15 correct in that it was not admitted -- this appeal covers  
16 the unadmitted and the admitted contentions. As your  
17 previous order stated, you would look at the entire issue  
18 as a whole.

19 It's also my point that we have more or less  
20 been operating under the gun throughout this proceeding, in  
21 that they, I believe, concluded -- all the previous  
22 Intervenor's contentions were included in January. I  
23 believe the Licensing Board's hostility to this issue  
24 throughout has been caused in part by their desire to  
25 please the Applicant and to rush this thing through. And

1 that's partly why the contentions were initially rejected,  
2 why we -- our stay request was rejected, our request for  
3 further disclosure was rejected, why we were dismissed as a  
4 party to the proceeding. We feel all of these things are  
5 indicative of the Licensing Board's giving us less of a  
6 leeway than previous Intervenorors had been given.

7 MS. KOHL: But you are talking about matters  
8 that were just as expeditiously corrected, from the  
9 standpoint of your client's interests. So that's water  
10 under the bridge, is it not?

11 MR. LOVE: Not in the sense of the admissibility  
12 of the correctional officers' contention is now before this  
13 Court for the first time. So I don't think they have been  
14 corrected.

15 MS. KOHL: Wasn't it this Board, though, that  
16 said in the first instance: When we reinstated the inmates  
17 as an Intervenor in the proceeding, we set the schedule for  
18 filing of contentions.

19 MR. LOVE: Correct.

20 MS. KOHL: There have been various orders issued  
21 by the Commission as well, that indicated that the  
22 proceedings should move along as expeditiously as possible.

23 So, wasn't there some basis in rulings from both  
24 this Board and the Commission itself, that provided the  
25 basis for the Licensing Board's scheduling?

1 MR. LOVE: Certainly. I agree with that 100  
2 percent. If it wasn't for this panel and the Commission  
3 itself, I would have never gotten anywhere in this case.

4 MR. EDLES: But, Mr. Love, let me come back to  
5 your point on bias. I can understand your saying to me:  
6 "Look, we were rushed along. It really wasn't our fault  
7 that we were now forced into this compressed timetable and  
8 all of that." And I think I have some sympathy for that  
9 idea. But that's quite different -- when you say: "Look,  
10 I could have done a better job if I had more time."  
11 There's loads of projects that I work on where I could make  
12 that same statement. That's different than saying the  
13 Board was completely biased against us and they had made up  
14 their minds that I was going to lose or something to that  
15 effect.

16 Can you really demonstrate that? Or can you  
17 just demonstrate that they were kind of moving along pretty  
18 fast here?

19 MR. LOVE: I think they were trying to get rid  
20 of me as soon as was humanely possible. They tried to do  
21 it through dismissal, through denial of disclosure, through  
22 the use of the exemption, and then by rejecting the merits  
23 of our claims. And I think that the Applicant didn't help  
24 anything by constantly bombarding the media with statements  
25 that this case was costing them \$1.5 million a day.



1 MR. EDLES: They didn't pick on you. They  
2 basically picked on us, as I recall, most of the publicity  
3 for that. It's our fault, not yours.

4 MS. KOHL: What we are trying to grasp, though,  
5 is where is the actual prejudice? We understand the gist  
6 of your argument and I think as a general principle, any  
7 time that a proceeding is moved faster than one or more of  
8 the parties are comfortable with, there's going to be a  
9 complaint there. But at what point does that complaint  
10 grow into a specific foundation for a showing of bias,  
11 which is what you are arguing in connection with here, is  
12 bias. And that's what we are having trouble discerning  
13 from your argument.

14 MR. LOVE: Just as to why I didn't ask for the  
15 recusal of anyone, as a legal aid attorney we often have to  
16 defend unpopular causes. And also, as a person that does a  
17 lot of work on behalf of institutionalized personnel,  
18 almost every case that I represent an inmate in, one of the  
19 first things they want to do is recuse the judge. I mean  
20 this comes up every time. Let's get rid of this person,  
21 let's get someone else. The first ruling they see: Let's  
22 get rid of them.

23 I don't use that. I feel that we just go the  
24 traditional legal routes. If we don't like the decision  
25 we'll appeal because there is no guarantee that the next

1 person is going to be any better than the first. And  
2 that's why I really, in this case, chose to just appeal  
3 decisions if I felt they weren't correct.

4 MR. EDLES: And I'm not, you notice, not  
5 critical of that strategy. But isn't the general rule, if  
6 you don't ask the Licensing Board to step down because they  
7 are biased, you have sort of waived that as a genuine  
8 challenge?

9 MR. LOVE: Once again, I feel that the due  
10 process guarantees indicate it doesn't so much have to be  
11 recusal. It's just if you feel you didn't get a fair deal  
12 you take it up on appeal on that issue. You didn't get an  
13 impartial tribunal, you didn't get a reasoned decision, you  
14 didn't get an opportunity to place in all the evidence you  
15 wanted to place.

16 I feel that an appeal is just as appropriate a  
17 strategy as recusal, which, realistically is usually denied  
18 from what I have seen.

19 As a matter of fact, Chairman Hoyt told me  
20 personally, she said, "If you want to recuse me you'll have  
21 to get in line."

22 MS. KOHL: Perhaps, Mr. Love, you should move on  
23 to some of your arguments on the merits.

24 MR. LOVE: I certainly will. I would just like  
25 to point out that due to the fact that five of my

1 contentions were initially rejected and that two were  
2 accepted, two different legal standards apply with respect  
3 to the five rejected contentions. Obviously, the  
4 admissibility standard would apply and with respect to the  
5 two accepted contentions, at least the portions that were  
6 accepted, a sufficiency of the weight of the evidence, a  
7 more traditional legal standard, would apply.

8 The first contention I would like to discuss  
9 involves the estimated time of evacuation. The Licensing  
10 Board framed this issue, and we agree with this statement  
11 as follows: Whether the time estimate is an adequate basis  
12 for planning appropriate protective actions for Graterford  
13 personnel. The Board admits only that portion of the  
14 Intervenor's allegation that deal with the sufficiency of  
15 the methodology used to arrive at the six- to 10-hour  
16 estimate.

17 A legal stand can be found in NUREG 0654,  
18 appendix 4, which states that the purpose of the estimated  
19 time of evacuation is that it will "be used for those  
20 emergency response personnel charged with recommending and  
21 deciding on protective actions in emergency."

22 Section 2C, entitled "Special Facilities  
23 Population," states that "These estimates for this  
24 population group shall usually be done on an institution by  
25 institution basis and the means of transportation are also

1 highly individualized and also, thus, should be described."

2 Now, the hearings in July produced the following  
3 interim findings with respect to this issue. The two plans  
4 were eventually produced, plan 1 and plan 2, neither of  
5 which contained an estimated time of evacuation. Three  
6 other estimated time of evacuations were submitted during  
7 the course of this proceeding. The first, Graterford  
8 Inmates' Exhibit 1, was submitted over four years ago and  
9 suggested an ETE of five hours 40 minutes in daylight only.  
10 No provisions were made if the incident occurred at night.

11 A second ETE appeared in the Applicant's initial  
12 exemption request on January 31, 1985, which suggested an  
13 ETE of six to 10 hours. This was later attributed to  
14 Commission's Jeffes, and Superintendent Zimmerman's  
15 testimony.

16 During the hearings in July, a third ETE was  
17 produced by Superintendent Zimmerman, complete with a flow  
18 chart, which measured eight to 10 hours.

19 Although Jeffes' estimate was the basis for the  
20 Licensing Board's order, I will assume for the sake of  
21 argument that Superintendent Zimmerman's estimates are  
22 controlling.

23 We presented testimony from Major John Case. He  
24 is the field director of the Pennsylvania Prison Society  
25 and spent 22 years in the Marine Corps, achieving the rank

1 of major; and also was involved in troop movements in Korea  
2 and governing penal facilities inside and outside the  
3 military.

4 He stated that the overall estimated time of  
5 evacuation could just as easily be 12 to 20 hours. It was  
6 his belief that Superintendent Zimmerman's estimate was  
7 based upon ideal conditions.

8 MR. EDLES: Would his estimate -- his estimate  
9 was based on what, worst case?

10 MR. LOVE: Realistic, I believe he used the word.

11 MR. EDLES: Major Case?

12 MR. LOVE: Yes.

13 DR. GOTCHY: I thought he agreed that the time  
14 estimates of eight to 10 hours were as reasonable as  
15 anybody could get if the inmates were adequately informed  
16 about their roles and were convinced that it was for their  
17 own best interests to cooperate.

18 MR. LOVE: That's the position I believe several  
19 of those in opposition to my position take, but it's not my  
20 position he said that. He said if the inmates were  
21 properly informed, the portions of the evacuation that took  
22 place -- securing of the inmates in the cells, loading, et  
23 cetera -- could be achieved if they could be made aware  
24 that this would be the procedure. In other words, if an  
25 emergency occurred, he didn't feel the inmates would be



1 inclined to go back to their cells knowing they might just  
2 be left there. However, if they were informed this was the  
3 first step toward an orderly evacuation, they would then  
4 realize it was their best interest to get inside their  
5 cells as soon as possible. Then the question was how would  
6 they know to get back into their cells? Then the  
7 superintendent came back with the idea of an addendum to  
8 the handbook, which we had some problems which Major Case  
9 felt -- he really felt a drill would be a better method in  
10 which to achieve this thing, and in light of the fact that  
11 a number of people up there are illiterate we feel perhaps  
12 a drill would be better.

13 MR. EDLES: Don't they have emergency lockdowns  
14 periodically? Forget about a potential nuclear accident.  
15 Aren't there times they go get locked down?

16 MR. LOVE: Every night.

17 MR. EDLES: I'm talking about on an emergency  
18 basis.

19 MR. LOVE: That's why I requested the  
20 information about the emergency lockdowns. Every now and  
21 then they have a routine shakedown but normally what they  
22 do there is not open the cells in the morning so they don't  
23 have the problem.

24 MS. KOHL: But how are the inmates informed of  
25 what they should do in those contexts. Why isn't the usual

1 means of notifying the inmates of what they are supposed to  
2 do in that kind of situation good enough for this situation  
3 as well?

4 MR. LOVE: Whenever there's a disruption -- and  
5 the testimony of three prior disruptions placed on the  
6 record indicates the inmates are uncooperative for one  
7 reason or another. The two power failures, in '82 and '83 --  
8 one took four hours to lock down and one took 22 hours.  
9 The hostage siege in '82 took two hours. A number of  
10 inmates, for one reason or another, don't cooperate.

11 MS. KOHL: But those are different situations,  
12 aren't they, from what we have here? Where the action that  
13 they would be asked to take would be for their own benefit?

14 MR. LOVE: The position of the Commonwealth in  
15 this case, up until Superintendent Zimmerman's testimony in  
16 July, was that the inmates wouldn't be told a thing about  
17 this. It seemed to be a --

18 MS. KOHL: That's no longer the case; right?

19 MR. LOVE: Correct.

20 MS. KOHL: They will be advised. Isn't there a  
21 public address system?

22 MR. LOVE: There is a public address system.  
23 It's very inaudible. It is difficult, but there is such a  
24 system.

25 MS. KOHL: I realize this hasn't been discussed

1 on the record, but what about efforts by the group of  
2 inmates whom you represent to inform their fellow inmates  
3 as to what would be expected of them in the event of an  
4 emergency?

5 MR. LOVE: I think that's a fine idea. I think  
6 Superintendent Zimmerman's idea of an addendum to the  
7 handbook is a good idea and I believe it's a step in the  
8 right direction. However, Major Case's idea of a drill, I  
9 think, is an equally good idea, and your idea is also. I  
10 think these people would probably be willing to take the  
11 lead in informing the individuals of the concerns, because  
12 I think it's essential that they understand what the plan  
13 is, so that there's a reasonable chance that it will be  
14 carried out with success. The position of the Commonwealth  
15 was that they shouldn't be informed because of security  
16 reasons.

17 MS. KOHL: But again, we are beyond that part of  
18 the matter. We have to be concerned, now, with not what  
19 necessarily would be the ideal situation, but what is in  
20 fact required by the Commission's various regulations and  
21 guidance in the emergency planning area. What would  
22 require the drill that Major Case would like to see? Is  
23 there anything in the regulations that would actually  
24 require that?

25 MR. LOVE: Well, we get back to the reason why

1 you have an estimated time of evacuation. It's a  
2 decisionmaking tool to be used by the planners and the idea  
3 is that whatever it may be, that that's a reasonable  
4 estimate. Our contention with respect to this point is  
5 previous experience shows that 30 minutes is not a  
6 reasonable time to lock down the institution. 30 minutes  
7 is the time that it takes to lock down the institution  
8 under normal circumstances. Any emergency situation that's  
9 ever developed has caused a considerable longer time than  
10 30 minutes. That was our point.

11 MR. EDLES: But you mentioned earlier in your  
12 presentation that Major Case agreed that if the inmates  
13 were well informed of this, that 30 minutes then would be a  
14 reasonable time?

15 MR. LOVE: I don't dispute that one bit.

16 DR. GOTCHY: Wasn't there also some testimony, I  
17 believe by Superintendent Zimmerman, that lockdowns  
18 commonly are done in like 15 minutes, as short as 15  
19 minutes.

20 MR. LOVE: Perhaps under normal circumstances.

21 MS. KOHL: What was Major Case's estimate? If  
22 30 minutes wasn't reasonable, what was his --

23 MR. LOVE: His original estimate, given in a  
24 deposition prior to hearing Superintendent Zimmerman's  
25 change of position, was up to four hours.

1 MR. EDLES: That was part of his 12- to 24-hour  
2 estimate? So the 12 hours now moves down to 30 minutes, on  
3 the basis of Zimmerman's information. You knocked the 12  
4 to 20 down to 8 to 16; something like that?

5 MR. LOVE: Correct.

6 MR. EDLES: And we are talking about the 18  
7 hours on the Zimmerman estimate, aren't we? All of these  
8 things seem to be more or less in the ball park here. I  
9 don't understand the argument you are making initially,  
10 which is that all three of these estimates are different  
11 and therefore there's something wrong there.

12 One seems to grow from the other and they all  
13 seem to be more or less in the ball park and when you take  
14 3-1/2 hours off the lockdown time you are pushing, you  
15 notice, Major Case's estimate down more or less into the  
16 same range as Mr. Zimmerman's.

17 MR. LOVE: I would say I would hope you were  
18 right in that, that each estimate was better than the  
19 previous one; however, Superintendent Zimmerman said he  
20 compiled his without the help of Commissioner Jeffes and  
21 vice versa. So there doesn't seem to be much coordination.

22 MS. KOHL: Didn't Superintendent Zimmerman,  
23 though, after his estimate was completed, didn't he send it  
24 to Commissioner Jeffes for his review?

25 MR. LOVE: I would assume he did.



1 MS. KOHL: I thought there was something in the  
2 record that indicated that. Why didn't you call  
3 Commissioner Jeffries as a witness, ask to have him  
4 subpoenaed so that you could find out exactly what his  
5 views were on the Zimmerman time estimate?

6 MR. LOVE: Once again, this was a complete  
7 surprise. I thought we were going in to review the  
8 estimates of Commissioner Jeffes, which had appeared in the  
9 only pleading up and to that point which was the Applicant's  
10 first compensation request of January 31, that said six to  
11 10 hours. I assumed we were going in on using the six- to  
12 10-hour estimate.

13 There were just two other points I'd like to  
14 make with respect to this estimated time of evacuation.  
15 And that is the vehicle entry problem, of the buses which  
16 are coming from 190 miles away to the institution and  
17 leaving the institution --

18 DR. GOTCHY: Not all the buses are coming that  
19 far. That's an outside --

20 MR. LOVE: As far as way as 190 miles.

21 MS. KOHL: Is there anything in the record which  
22 indicates how many? You know, what percentage of the total  
23 buses that would be needed would be coming from that  
24 distance?

25 MR. LOVE: That information was kept

1 confidential. The identity of the bus companies was not  
2 revealed to me for security reasons.

3 DR. GOTCHY: Wasn't there some testimony by  
4 Mr. Zimmerman, under examination by Judge Harber, that  
5 indicates that the buses coming from 190 miles away were  
6 coming from other correctional institutions?

7 MR. LOVE: I believe he said that they would  
8 stop at other correction institutions, that they were  
9 coming from private bus companies and we were shown letters  
10 of agreement with the private bus companies. They would  
11 then go to another state correctional institution and I  
12 assume pick up some security personnel and then proceed to  
13 the Graterford site.

14 MR. EDLES: There was also testimony, I think  
15 also in the same basic part of the record that Dr. Gotchy  
16 is talking about, where they said that in previous -- I  
17 think it was at the Three Mile Island -- during the Three  
18 Mile Island accident, that in point of fact the buses got  
19 there very fast and were waiting, and there was a  
20 suggestion that that might indeed happen, except for a  
21 fast-breaking kind of evacuation, that that might well  
22 happen again.

23 MR. LOVE: That might happen, but then again it  
24 might not happen. I mean, as you pointed out, that was a  
25 very slowly-developing situation. I don't know if we can

1 be sure that they'll all develop in such a fashion.  
2 Hopefully they will. But I don't think there's any  
3 guarantee. I think you have to be prepared for an instance  
4 that may be somewhat more developed, in a quicker fashion  
5 than that one.

6 Just a few more points --

7 MR. EDLES: If I can pursue that, let's assume  
8 we knew the six- to 10- hour estimate was absolutely  
9 ironclad. There was no doubt that was accurate to a dozen  
10 decimal places.

11 Couldn't the buses then always get there?  
12 Wouldn't the decision have to be made based on a knowledge  
13 that it would take six to 10 hours to evacuate the  
14 institution? Wouldn't the buses almost always get there  
15 within the six- to 10-hour time frame? Is there a  
16 realistic risk that they are not going to be there within  
17 10 hours? Or six to 10 hours? Or that some of them  
18 wouldn't arrive within six hours?

19 MR. LOVE: It's two to four hours for the  
20 estimate for their arrival.

21 MR. EDLES: That's right, but six hours is the  
22 estimate for the total evacuation.

23 MR. LOVE: Certainly. Coming, picking up, and  
24 leaving. Certainly.

25 MS. KOHL: To focus on this, the institution is

1 very close to the outer perimeter of the EPZ , so they only  
2 have about a mile and a half to go?

3 MR. LOVE: That's correct, but there may be  
4 other factors causing other problems in that the buses may  
5 not be arriving for two to four hours and the evacuation  
6 may be peaking, of the general public. We see from Robert  
7 Morris numerous problems due to roadway closings caused by  
8 accidents by individuals choosing to use the wrong side of  
9 the road, road conditions, radioactive conditions, could  
10 show certain roadways, et cetera, et cetera.

11 DR. GOTCHY: Do you know how many entrances  
12 there are to Graterford?

13 MR. LOVE: I believe there's a front and back  
14 entrance.

15 DR. GOTCHY: The east side?

16 MR. LOVE: Yes.

17 DR. GOTCHY: Looking at the map that's maybe  
18 four blocks from the edge of the EPZ , as we recall.

19 MR. LOVE: Once outside the 10-mile surface we  
20 don't feel the danger decreases, nor do we feel there will  
21 be a real reduction in radio capacity --

22 DR. GOTCHY: But there's no plans to move the  
23 people living within a few blocks out from Graterford. Nor  
24 does it get potassium iodide, does it?

25 MR. LOVE: There's a great possibility that

1 everyone involved in the evacuation will be staying in the  
2 area a much longer time than anyone else and that's why we  
3 have pressed for training, dosimeters and what not, because  
4 these people will probably be the last people out from what  
5 I can see. So we feel that these concerns are legitimate.

6 If I could just say one or two more words while  
7 we are on the estimated time of evacuation regarding the  
8 manpower mobilization unit, which we think is equally as  
9 important not just as to the time of evacuation but the  
10 rejected contention of ours involving the manpower  
11 mobilization. This component is deemed to take one to two  
12 hours and the plan calls for 700 personnel from the  
13 Graterford institution to be involved in the evacuation.  
14 There's 400 correctional officers and 300 support personnel.  
15 Ideally the 400 correctional officers will be all that's  
16 required to conduct the evacuation. If any more is  
17 necessary, then they will rely on the 3300 support  
18 personnel.

19 MS. KOHL: When you say 400, is that how many  
20 are on duty at any given time?

21 MR. LOVE: No. That's the total complement of  
22 the guard force. I think the maximum number on duty at any  
23 one time is 149.

24 MR. GOTCHY: I was looking for that in the  
25 record and I couldn't find it.



1 MR. LOVE: The amounts?

2 DR. GOTCHY: Yes.

3 MR. LOVE: That was not in the record. However  
4 in another case, Hassan versus Jeffes, this issue did come  
5 up and figures were given to me. They indicate 149 on the  
6 6:00 to 2:00, and 70 on the night shift, and some number in  
7 between on the evening shift. So the maximum number that  
8 could ever be on duty would be 149. And being the plan  
9 calls for 400 persons to be involved, this means that the  
10 call-up system will have to be utilized.

11 Now, the superintendent stated that the call-up  
12 system is based upon a pyramid structure where the shift  
13 commander will call one individual in his private home who  
14 will then call X number of individuals and so on and so  
15 forth in the fashion of a chain letter. This system has  
16 never been tested in an actual emergency that also affected  
17 the general public.

18 MR. EDLES: Has the scheme, though, been tested  
19 at all?

20 MR. LOVE: Yes.

21 MR. EDLES: And it works generally except you  
22 have never tried it out with everybody else on the phone?

23 MR. LOVE: That's correct; yes.

24 MS. KOHL: Isn't that similar scheme used in  
25 other nuclear plants for other nuclear plants --

1 MR. LOVE: Not to my knowledge. I'm sure you  
2 have more knowledge than I do.

3 MS. KOHL: Staff counsel in there perhaps  
4 indicated that San Onofre was another plant that uses a  
5 similar -- it's not unique, in other words.

6 MR. LOVE: It's not unique, however. In the  
7 Cincinnati Gas & Electric, Zimmer in Ohio at 17 NRC 760,  
8 stated "During an emergency the commercial telephone  
9 circuits would likely become overloaded as a result of  
10 public usage and then become unavailable for public use."

11 MS. KOHL: Wasn't that finding made after an  
12 evidentiary hearing where evidence on the particular  
13 telephone circuits in the Cincinnati vicinity -- that  
14 evidence was on the record. Here, is there any indication  
15 that, in fact, the telephone circuits will become  
16 overloaded?

17 MR. LOVE: Yes, there is. Rick Brown, an AT&T  
18 specialist, testified in earlier proceedings that emergency  
19 procedures such as natural disaster or manmade ones -- they  
20 are not engineered for these provisions. One need only  
21 look back to the Agnes flood of '72 to see what havoc it  
22 plays on the telephone network. During the flood dial tone  
23 delays were up to 30 minutes in duration.

24 So, I believe that there is testimony on record  
25 to indicate that there is some question as to the

1 reliability of the telephone lines.

2 MS. KOHL: I think his testimony was somewhat  
3 limited, though, to calling those who have an immediate and  
4 direct responsibility in the emergency operations center.

5 MR. LOVE: It may well be, but we --

6 MS. KOHL: And there was a specific remedy that  
7 was derived to address those concerns. He was then  
8 satisfied.

9 MR. LOVE: That may be the case. However we  
10 feel the potential for havoc in dial tone delays or what  
11 not would cause a problem with the call-up system that does  
12 rely upon private and commercial telephone lines.

13 MS. KOHL: Since there is a backup system,  
14 though, for notifying these off-duty officers, why isn't  
15 that adequate?

16 MR. LOVE: I don't know if there is a backup  
17 system. I believe one of my contentions was that there  
18 wasn't a backup system.

19 MS. KOHL: I thought this was addressed during  
20 the various prehearing conferences and in some of the  
21 pleadings and I thought that there is at least one  
22 dedicated line that goes directly to the state police and  
23 they, in turn, have a role in notifying the off-duty  
24 officers in the event that the telephone -- the commercial  
25 lines are inaccessible.

1 MR. LOVE: Well, the Licensing Board treatment --

2 MS. KOHL: Wasn't that the testimony -- I think  
3 it was -- of Commissioner Jeffes back in March at one of  
4 the hearings?

5 MR. LOVE: He said something to that effect.  
6 However, I did not understand what he was talking about,  
7 because however many dedicated phone lines there are, five,  
8 which is what the Licensing Board suggested, or one, which  
9 the Bureau suggested --

10 DR. GOTCHY: I think Commissioner Jeffes is the  
11 one who said five.

12 MR. LOVE: Only one call will be issued from the  
13 institution, so what difference how many phone lines --  
14 with respect to the state police, so they can call the  
15 state police, what could they do? Are they then going to  
16 to the correctional officers' homes? Do they have enough  
17 personnel to do this? Do they know where the correctional  
18 officers live? I see this backup system as not being  
19 viable at all. If, in fact, the state police are the backup  
20 system, I don't believe there's any state police in the  
21 area that could substitute for the guards. And I don't  
22 think they have the capabilities of contacting the guards.  
23 So I don't see what a dedicated phone line to the state  
24 police will do to serve as a backup if the commercial lines  
25 are overburdened and the guards can't get through to each

1 other.

2 DR. GOTCHY: When would commercial lines be  
3 expected to be overburdened? Would it be, say, at the  
4 stage of an unusual event, or an alert, or a site emergency?  
5 At what point would the public become aware of this as a  
6 problem?

7 MR. LOVE: I think obviously the media would be  
8 the first contact that people in the area would have,  
9 knowing there was some kind of a problem. But once the  
10 official order was given to evacuate I would assume then  
11 there would be a tremendous usage of telephones. People in  
12 varying stages of their daily activities would certainly  
13 want to contact their families and what not, and coordinate  
14 whatever plans they personally had.

15 DR. GOTCHY: Certainly when sirens went off that  
16 would be a big clue to the public.

17 MR. LOVE: Yes. I would agree with that.

18 DR. GOTCHY: Normally that's supposed to occur,  
19 I think in the site emergency stage? Do you recall that?

20 MR. LOVE: I don't recall it.

21 DR. GOTCHY: It's in 0654.

22 As I understand the Graterford plan, they are  
23 supposed to be notified and lining up buses and bus drivers  
24 and that sort of thing at the alert stage, is that right,  
25 and notifying their off-duty personnel, that sort of thing.



1 Which, as I understand it, would certainly be before sirens  
2 would go off.

3 MR. LOVE: Just to point out a recent example  
4 Mr. Romano was going to point out. Recently there was a  
5 rock concert, Bruce Springsteen. The way they sell the  
6 tickets is through the telephones, and just for a rock  
7 concert you couldn't get a dial tone. So, something as  
8 small as that triggers --

9 DR. GOTCHY: It wasn't that small in D.C..

10 MR. LOVE: Well, I'm not going to comment on  
11 that.

12 MS. KOHL: You have about five minutes left.

13 MR. LOVE: I'm going to touch briefly on the  
14 civilian training issue which we feel is also important.  
15 This was a contention also litigated in the hearings in  
16 July, and the radiological response plan calls for the use  
17 of civilian personnel to assist in the evacuation. This  
18 includes bus drivers, ambulance drivers and perhaps  
19 additional rescue squad personnel.

20 The plan also states as I mentioned earlier, "Due  
21 to the safety and security considerations associated with  
22 moving a large inmate population, time allotted for  
23 clearing the institution of all inmates most probably will  
24 take a significantly longer period of time than is expected  
25 for the general public to evacuate. The SCIG inmates have

1 an increasing chance of incurring exposure due to release  
2 from the Limerick generating stations."

3 I brought this up in two closed conferences in  
4 Harrisburg, stating our concern that the inmates would be  
5 exposed with an additional period of time. The  
6 Commonwealth came up with the offer that these personnel  
7 who weren't already going to be trained such as the  
8 civilians, could be offered some sort of training in  
9 responding to an emergency of this sort. Once again, this  
10 was a step in the right direction. We asked for more  
11 details, you know, as to how this would transpire and what  
12 kind of courses were offered.

13 MR. EDLES: But you made no challenge, as I  
14 recall, at least on appeal, to the substance of the  
15 training. Is that right?

16 MR. LOVE: That is correct.

17 MR. EDLES: If they get the training then it  
18 would be all right?

19 MR. LOVE: Initially I didn't understand the  
20 training that occurred previously with some bus drivers.  
21 It seemed to be extensive but upon review it appeared to be  
22 adequate.

23 MR. EDLES: Your view is you want to make sure  
24 the people receive the training.

25 MR. LOVE: Yes.

1 MR. EDLES: There were assurances on the record  
2 that they would get the training. Why isn't that enough?

3 MR. LOVE: And there were also assurances on the  
4 record that they would not. Major Case suggested that  
5 there was a lack of information to indicate that the  
6 training would ever occur.

7 MS. KOHL: That's not quite the same thing as  
8 saying there's an assurance they would not get the training.  
9 Weren't the assurances that they would get the training the  
10 same type of assurances that were given with respect to the  
11 drivers of school children and others who might need it?

12 MR. LOVE: I honestly don't know what sort of  
13 offers were given to them in that regard. In this instance,  
14 one letter was sent out on April 4 of '85, a form letter,  
15 two paragraphs long, suggesting that the civilian personnel  
16 could receive if they wished a two-hour training in basic  
17 radiological emergency response. There were no answers to  
18 those letters. Not even a phone call.

19 MS. KOHL: But that was acknowledged by the  
20 witness. I think it was a Mr. Taylor?

21 MR. LOVE: Mr. Taylor acknowledged that.

22 MS. KOHL: He said he would follow up just as he  
23 had done in other instances, to make sure that they had  
24 understood that the training was available and would  
25 encourage them personally to attend.

1           MR. LOVE: And he also stated he didn't believe  
2 the training really was necessary.

3           MS. KOHL: He what?

4           MR. LOVE: Believed the training wasn't really  
5 necessary. So how can an individual sell a program he  
6 doesn't really believe in. Mr. Asher stated that the  
7 people, if they were trained and knew what was going to  
8 happen, chances are they would not show up and it would  
9 decrease their level of participation in this situation.  
10 And we feel, once again, we feel it's very questionable to  
11 even use civilian personnel in a situation such as this  
12 where you are asking someone from one to 30 miles away, a  
13 private individual who works for a bus company who jumps  
14 into his bus to drive into a nuclear emergency which he is  
15 going to be well aware of, pick up some of the most  
16 dangerous felons in the state, people with death sentences  
17 and the like, and to drive them back out and all of this  
18 done while the public is evacuating is a fairly serious  
19 task.

20           MR. EDLES: Mr. Love, that's true. But without  
21 getting into any material that is not publicly available,  
22 my recollection of the record was that there would be vans  
23 used as well as buses.

24           MR. LOVE: Correct.

25           MR. EDLES: I assume, at least, that those vans

1 would be used to transport the more serious felons.

2 MR. LOVE: The way I understand the  
3 classification system, it's not really based on the crime  
4 you committed but actually on your institutional record  
5 more or less. There's program 1, 2, 3, 4, and 5 level  
6 inmates, and those levels are determined more or less on  
7 the basis of --

8 MR. EDLES: But those -- those are professional  
9 determinations as to risk, presumably, that these people  
10 pose to the community, to other inmates, whatever.

11 MR. LOVE: Not necessarily, because you have  
12 many people serving life sentences on the minimum security,  
13 on the farm, you have multiple murderers in the general  
14 population.

15 MS. KOHL: Is that any indication of their  
16 willingness to cooperate? Isn't that what those categories  
17 represent, irrespective of what they might be in for?

18 MR. LOVE: To a certain extent you are right.

19 MS. KOHL: Isn't that relevant then?

20 MR. LOVE: I believe so, certainly. As is  
21 relevant the fact that someone might be serving a death  
22 sentence and have absolutely nothing to lose by doing  
23 whatever they deem necessary to escape or whatever.

24 DR. GOTCHY: There are, what, about 200 of these  
25 people that represent relatively high risk?



1           MR. LOVE: There are 400 lifers and 12 with  
2 death sentences.

3           DR. GOTCHY: The flow chart from Commissioner  
4 Zimmerman's testimony indicates there were only about 125,  
5 and somewhere later on I read 200, people that were  
6 considered in a high risk category.

7           MR. LOVE: I think that's correct, yes, sir.

8           DR. GOTCHY: Those would be the ones that would  
9 be evacuated last, as I understand it. The first 200 would  
10 be gone in relatively short time.

11          MR. LOVE: As I remember, there would be some  
12 confusion how the order would be. I recall some  
13 conflicting testimony on what the order would be.

14          MR. EDLES: Am I wrong in the inference that  
15 those who are high risk would be looked after by  
16 professional correctional officials as opposed to private  
17 bus drivers who were coming on the scene? Isn't there some  
18 hierarchy in which, I assume, you are not going to load,  
19 you know, 60 of their highest risk people with just a  
20 civilian bus driver sitting there.

21          MR. LOVE: I think you are right. Certainly  
22 that would be taken into consideration. But you also have  
23 to deal -- you understand that we are dealing with the most  
24 maximum secure facility in the state of Pennsylvania, a  
25 facility that holds 2500 individuals. The facility has 400

1 persons serving life sentences. There's a number of  
2 dangerous individuals in this institution.

3 MS. KOHL: So the other side of that coin,  
4 though, is that the witnesses who testified are the experts,  
5 the people who deal with these individuals every day, and  
6 aren't they, then, in the best position to know what type  
7 of measure should be used to deal with an emergency?

8 MR. LOVE: One would think so. But we could  
9 point to the almost annual disruptions at the institution  
10 and also the high turnover. There's been three  
11 superintendents in the last couple of years. I mean there  
12 is also a lot of other factors involved in addition to that.

13 MS. KOHL: You are just about out of time. If  
14 you want to take one minute and sum up, you may.

15 MR. LOVE: Just on this point here, I would like  
16 you to consider the fact that the Licensing Board limited  
17 my contention with respect to the training in that they  
18 stated that the training, it should be a question of  
19 whether PEMA should offer the training and then, if the  
20 offer is made, they have done all that is necessary. I  
21 don't believe that this is really --

22 MS. KOHL: I thought the Board accepted your  
23 contention virtually verbatim, as you --

24 MR. LOVE: They did not. The Licensing Board  
25 order of 6/12/85 accepted the contention in part and

1 modified it in part. There were two modifications. First  
2 they stated that PEMA should offer training and then they  
3 defined the civilian personnel that would be trained.

4 MS. KOHL: Didn't your contention, as you stated  
5 it, use the same term "knowledge offered"?

6 MR. LOVE: In my contention said that there  
7 would be a reasonable assurance that the training occur and  
8 I stated in my argument here, the contention should read "a  
9 reasonable assurance" -- not an offer or a guarantee -- "must  
10 be provided that training will occur." And that's it.

11 Thank you.

12 MS. KOHL: Mr. Romano, the terms of our order of  
13 October 24 were very clear. We expected you to advise us  
14 of your appearance here today. You failed to do that. We  
15 also indicated that anyone who arrived late would not be  
16 permitted to argue. That part of the order was for your  
17 benefit because, Mr. Romano, you have been late without  
18 good cause for virtually every proceeding, every hearing  
19 before the Licensing Board as well as before -- as well as  
20 oral argument that you participated in before us.  
21 Therefore you will not be permitted. We already gave your  
22 amount of argument time to Mr. Love. You may take your  
23 seat in the audience, please.

24 MR. ROMANO: I think it's unfair. I had to come  
25 all the way from --

1 MS. KOHL: Mr. Romano, I'm not going to argue  
2 with you about this. Our order was very clear. Please  
3 take your seat.

4 Mr. Rader?

5 MR. RADER: Thank you, your Honor. May it  
6 please the Board?

7 With respect to Mr. Love's procedural arguments,  
8 bias, we certainly agree with the position expressed by  
9 Judge Edles that there can be no claim of bias without a  
10 motion to recuse or disqualify. And certainly the  
11 Commission precedent is replete with the principle that  
12 bias can be made on the basis of adverse rulings, which is  
13 all Mr. Love relied upon.

14 With regard to the scheduling problems, I think  
15 the Board --

16 MR. EDLES: Let me just pick up on that point.  
17 I thought Mr. Love's point was not simply that there were  
18 adverse rulings but that this was a consistent pattern by  
19 the Licensing Board to get rid of him, under any and all  
20 circumstances.

21 Can't we look at adverse rulings as part of a  
22 total package, which is, I think, the reason why he was  
23 going into the history of this proceeding. Why can't we  
24 look at that? I agree with you as a general legal  
25 principle, simply the fact that you -- the Board decides

1     against you on an issue doesn't mean that that's bias. But  
2     his suggestion was that this was part of a total package  
3     and, as he said, she was trying -- the Board was trying to,  
4     as humanely as possible, get them out of the case and get  
5     the plant licensed.

6             MR. RADER: On the particular ALAB opinions on  
7     which this Board revered the Licensing Board, there was  
8     certainly no expression to the effect the Licensing Board  
9     had acted unreasonably or acted unfairly; simply it reached  
10    an incorrect position of law. The Licensing Board, in ruling  
11    as it did in rejecting certain contentions or in granting  
12    the exemption to Applicant, followed the position urged not  
13    only by the Applicant but also by the NRC Staff and by  
14    counsel for the Commonwealth. So I think the Licensing  
15    Board, while it may have erred as a matter of law in  
16    certain respects as found by the Board in ALAB 806 and ALAB  
17    809, the fact remains that its positions were certainly  
18    legally tenable, although it was corrected by this Board.  
19    So I don't think there's any pattern of findings which  
20    could be deemed so abusive or so facially unfair as to  
21    demonstrate any inherent bias.

22            With regard to discovery matters and scheduling  
23    matters, I don't think the Board has to go any further than  
24    its previous ruling in ALAB 813, in the Catawba case, where  
25    it said it was incumbent upon the Intervenor to



1 demonstrate the discovery period was so inadequate as to  
2 deprive them of procedural due process, page 74, volume 22.  
3 And more specifically the Board said, "It is incumbent upon  
4 Intervenors at bare minimum to say so explicitly in their  
5 brief and inform us which witness or witnesses were not  
6 allowed to testify, the reasons assigned by the Board, and  
7 the substance of their precluded testimony."

8 That has not been done by Mr. Love.

9 And finally the Board said the Intervenors did  
10 not object to the schedule duly on the grounds that their  
11 expert would be unavailable, on page 82, and continuing on  
12 page 83, "without having explicitly linked the Catawba  
13 hearing schedule with the unavailability of their expert  
14 witnesses and their objection before the Licensing Board,  
15 the Intervenors may not now claim for the first time on  
16 appeal that the Board belowered in establishing the hearing  
17 schedule. And that's precisely what happened, your Honor.

18 Specifically with regard to Thomas Martin, I  
19 think counsel for the Staff and Commonwealth will bear me  
20 out on this. We never agreed to take Mr. Martin's  
21 deposition anywhere. We agreed in a subsequent conference  
22 call among counsel, following the conference call with the  
23 Licensing Board, that we would look at a stipulation to be  
24 prepared by Mr. Love with regard to Mr. Martin's testimony.  
25 And if we could agree to it, we would.

1           We received no such stipulation. We received  
2 only the proposed testimony that was filed prior to the  
3 hearing. We objected to it. It's irrelevant. It's  
4 nonsensical in part. It has absolutely no evidentiary  
5 foundation and the Board properly excluded it.

6           Now, with regard to these logs that Mr. Love was  
7 looking for, I think that he misspoke himself in  
8 overlooking the letter to him dated June 27, 1985, from  
9 Mr. Theodore Otto, who was counsel for the Department of  
10 Corrections, when he specifically informed him in a letter  
11 which was Applicant's Exhibit 1 at the hearing that "the  
12 state correctional institution at Graterford does not  
13 maintain a daily logbook that would assist you in  
14 determining the period of time that it took to lock up the  
15 Graterford institution during the other instances you  
16 referred to." Then the letter goes on to recite the fact  
17 that these lockdown times are contained in some reports of  
18 the incidents to which Mr. Love referred but you'd have to  
19 look at the records. There are no logbooks as such that  
20 would contain that information.

21           MS. KOHL: Why didn't they provide the report  
22 then?

23           MR. RADER: They did, and these were some of  
24 Mr. Love's exhibits, as I recall, his Exhibits 2, 3, and 4.

25           DR. GOTCHY: Where do they get the information

1 to write those reports? Somebody's memory several days  
2 later?

3 MR. RADER: Several days later, a chronological  
4 progression of what happened during the incidents.

5 MS. KOHL: But these were roughly  
6 contemporaneous with the incidents, though?

7 MR. RADER: Correct. Correct.

8 MS. KOHL: Do you know what four items Mr. Love  
9 was referred to that he did not get out of the seven that  
10 he requested?

11 MR. RADER: As I understand Mr. Otto's letter,  
12 what he is saying is that the reports for those other  
13 incidents do not contain any discussion of lockdown times,  
14 which is what Mr. Love was looking for. Now, I may be  
15 misinterpreting that but that was my interpretation. In  
16 any event, at the time of the hearing, this was discussed  
17 on the record at length on the first day of the hearing and,  
18 if the Board reviews that, I think it becomes quite clear  
19 that Mr. Love was given all the information that he  
20 requested that was available. I think his real complaint  
21 is that the correctional people weren't able to generate  
22 the kind of material that he wanted. It just so happens it  
23 didn't exist.

24 I would also note that with regard to  
25 preparation and witnesses, that Mr. Love did not depose any

1 of the witnesses who testified, although they were  
2 designated well enough in advance. He didn't depose  
3 witnesses provided by the state, as Mr. Zimmerman, Mr. Taylor.  
4 He didn't depose the NRC's witness, Dr. Bannock or the FEMA  
5 witnesses, Mr. Lieberman and Mr. Asher and Mr. Kinard from  
6 FEMA.

7 With regard to union input, I think this is a  
8 relatively frivolous issue but nonetheless the fact remains  
9 that he didn't offer any union testimony. He argues that  
10 the union should have had some input. He didn't offer any  
11 union testimony. Had it been offered it might have been  
12 considered.

13 MS. KOHL: It wasn't at the stage, though, where  
14 testimony as such would be offered. He was simply trying  
15 to get his contention admitted.

16 MR. RADER: But his point is these other people  
17 weren't allowed to testify. That didn't preclude him from  
18 having a union official or anyone else testify if he had  
19 probative matters on the two admitted issues and this he  
20 didn't do.

21 With regard to Major Case and his opinion that  
22 the evacuation time estimate would be more appropriate in  
23 the 12- to 20-hour range, I would point out with respect to  
24 time estimates, Major Case had rather limited credentials.  
25 He was unfamiliar with the planning requirements of NUREG

1 0654, he had not administered a prison, a maximum security  
2 prison the size of Graterford; he had no particular  
3 knowledge with regard to evacuation study preparation or  
4 time/motion analysis.

5 MS. KOHL: I thought he had some experience.  
6 though, in the Korean War?

7 MR. EDLES: He mentioned his military experience.

8 MR. RADER: He does have military experience and  
9 does know how to evacuate men, but I don't think we can  
10 equate prisoners with trained Army personnel.

11 MR. EDLES: What is Mr. Zimmerman's expertise in  
12 actual evacuations of prisoners? He knows prisoners and  
13 Case knows evacuations. Neither one knows both, it looks  
14 like.

15 MR. RADER: Yes, but Mr. Zimmerman, the  
16 important thing is Mr. Zimmerman is aware, and has expert  
17 experience in the actual components which break down and  
18 form the various time estimate components.

19 MR. EDLES: Like getting buses?

20 MR. RADER: He knows how long the buses take  
21 because the vans and the buses routinely come from other  
22 institutions, from those from which they will becoming.

23 DR. GOTCHY: That's routinely.

24 MR. RADER: These are going to be -- this will  
25 not take any longer because it was also testified to, and



1 this relates to material in the third PID, that the roads  
2 will be open both way; traffic will be controlled, and so  
3 access will be available to the EPC, and in particular to  
4 the Graterford institution in an emergency.

5 MS. KOHL: Isn't that part of Mr. Love's  
6 argument, that those evacuation time estimates aren't  
7 realistic because that's an unlikely situation; that the  
8 traffic will be exceptionally heavy given the emergency  
9 situation, extremely hazardous weather conditions weren't  
10 taken into account --

11 MR. RADER: And that was considered by the  
12 planner. It was considered in Dr. Urbanik's testimony, it was  
13 considered by the Commission in their immediately effective  
14 order where all of them said these evacuation time  
15 estimates have to consider minimally realistic conditions.  
16 Yes, we might get eight feet of snow, but the more  
17 realistic condition is that we'll have --

18 MR. EDLES: I understood them to discuss that in  
19 terms of worst-case analysis. Not that they shouldn't take  
20 that into account, somehow, that you may have to evacuate  
21 at night, you may have to do it in a rainstorm -- those are  
22 not unreasonable circumstances.

23 Yes, if you tell me they don't have to consider  
24 the possibility that at the precise moment of evacuation  
25 they'll be in the midst of a 12-foot snowstorm or something

1     Like that that happens once in a century, I can understand  
2     that. But I thought that the basic argument here was that  
3     it, that the Zimmerman estimates were the kind of an  
4     estimate that if everything really went precisely right,  
5     and intuitively we know that isn't going to happen. Isn't  
6     that basically the argument that the inmates are making?

7             MR. RADER: That's the argument. But the fact  
8     is that the Zimmerman testimony and flow chart were based  
9     upon a range and with regard to transportation in  
10    particular, since we are focusing on that, that range went  
11    up to six hours, considering the possibility of adverse  
12    weather or other conditions which inhibited the  
13    transportation coming into the facility.

14            So, six hours under adverse conditions, four  
15    hours under average conditions, I think is an intuitively,  
16    if we base it on that --

17            DR. GOTCHY: Let me just ask you a question.  
18    Let's say you had some buses coming from Camp Hill. If you  
19    looked at the map of Pennsylvania and lo and behold, the  
20    Philadelphia area is right in the southeast corner of the  
21    state and I assume these buses would be coming from other  
22    state institutions, not from New Jersey or Maryland.

23            MR. RADER: That's correct.

24            DR. GOTCHY: If you look at the approach, that  
25    10-mile EP2, that blocks out a very large area in that part

1 of the state. How -- I mean we have nothing I could find  
2 in the record, I guess because the routes are considered  
3 security information, as to how those buses are going to  
4 get around this 10-mile EPZ at a time the people are  
5 evacuating the EPZ , for example.

6 MR. RADER: The important and key point here is,  
7 and this was clearly established in the third PID hearing,  
8 is that traffic officials will work to keep lanes moving  
9 under their normal utilization so there will be full lane  
10 utilization in each direction as the highways are currently  
11 in use.

12 DR. GOTCHY: If they come from the west side of  
13 the EPZ , they'll have to go by Limerick and back out  
14 toward Graterford.

15 MR. RADER: I don't think they'll do it that way.

16 DR. GOTCHY: I hope not, but if you did,  
17 wouldn't you be sitting with these buses queing trying to  
18 get out to the east towards Montgomery -- toward Graterford?  
19 They have to have some way to get around that problem.

20 MR. RADER: I believe that Mr. Zimmerman stated  
21 that the bus routes were designated in such a way as it  
22 would not be impeded by evacuating traffic.

23 DR. GOTCHY: That's what I said, but I didn't  
24 know what I meant.

25 MR. RADER: Again, it's hard to be more specific

1 without speaking out of school, but I think the inference  
2 from this is clear, is that they are not going to travel  
3 through the EPZ . I think the Commonwealth council may be  
4 able to give further representations than I would be  
5 willing to make on the public record. But I think that is  
6 the case.

7 DR. GOTCHY: Thank you, sir.

8 MR. EDLES: Can I ask you to address the call up  
9 problem? The exclusion of the contention? Let me tell you  
10 exactly my problem here. I read a good bit -- all of what  
11 the Licensing Board did, and then I looked at your brief,  
12 for example, which makes reference to the fact that the  
13 call-up is adequate. And all of that stuff looked to me  
14 like the Licensing Board and you and everyone else was  
15 making a sort of evidentiary determination that everything --  
16 that the call-up was going to work well. But that's not  
17 what we are supposed to do at the contention stage.

18 If this was a motion for summary judgment or if  
19 this were the decision that the Board reached at the end of  
20 the case, after all the evidence was in, I would say: All  
21 right, you know, it sounds reasonable to me. But why is  
22 this the proper time for doing that, when all we are asking  
23 is whether there's a basis for the contention?

24 MR. RADER: The problem there is that since very  
25 little was alleged, it's difficult to refute it without

1 bringing in other facts which were on the record.

2 In order to -- if this were some kind of other  
3 safety issue, we might have an FSAR to look at or if it  
4 were an environmental issue we'd have the EROL to look at,  
5 and this normally provides the basis for comparing the  
6 allegations against the record to determine whether or not  
7 the allegations are sufficiently specific and have basis.  
8 In an instance such as this, though, where --

9 MR. EDLES: But let me see if I can work my way  
10 through it and tell me where I go astray.

11 You say we are going to have this pyramiding  
12 call up scheme using commercial telephone lines.

13 MR. RADER: Right.

14 MR. EDLES: Mr. Love comes in and said, wait a  
15 second, commercial telephone lines aren't going to do the  
16 job and by the way, we have some evidence that a Bell  
17 Telephone representative who testified in an earlier phase  
18 said that the system isn't really equipped to handle these  
19 kind of circumstances; and, second that during the flood in  
20 1972 there were as much as 30-minute delays in getting a  
21 dial tone.

22 That sounds to me like he's raised something.  
23 Maybe you can ultimately rebut that at a hearing but it  
24 sounds to me like he raised something. Why is it  
25 insufficiently specific?



1           MR. RADER: Let's accept that on its face, that  
2 everything you said he said is true. Mr. Zimmerman  
3 testified that the notification period for guards, not on  
4 duty, would run up to three hours under adverse conditions.  
5 He expects to get them in in an hour or two but under  
6 adverse conditions, two to three hours.

7           MS. KOHL: Wait a minute. At what point did  
8 Mr. Zimmerman testify? We are still here at the admission  
9 of contention stage. Wasn't his testimony later? Or are  
10 you referring to -- well, exactly where did he testify?

11          MR. RADER: It was his testimony -- and I would  
12 be compelled to say if the Board committed any error it was  
13 harmless error, because the testimony showed there was not  
14 basis for the contention. But my basic point is that this  
15 is the system which has been utilized and as I believe one  
16 of the Board mentioned, in Diablo and was approved in  
17 Diablo, was approved in Shoreham. To my knowledge it is  
18 used in basically every emergency plan and scheme.

19          MR. EDLES: To my knowledge we have never had  
20 that issue on appeal. I realize there's one Licensing  
21 Board that seems to say that in those particular  
22 circumstances -- by the way, that Licensing Board decided  
23 that after a hearing. During the course of a hearing I  
24 made the very kind of evidentiary findings I'm talking  
25 about. I looked at the scheme, asked about these other

1 systems, commercial lines are okay, various analyses of the  
2 call-up scheme -- I think it was at Diablo Canyon, and they  
3 did that at a hearing on a record. And I don't understand  
4 why that is now translatable to the circumstances of the  
5 Graterford institution insofar as Limerick is concerned.

6 MR. RADER: The finding is basically generic.  
7 There's nothing alleged that there's anything special about  
8 the circuitry in the telephones in the Limerick area.

9 MS. KOHL: The population is different and in  
10 some instances the actual telephone companies might well  
11 differ.

12 MR. RADER: The key point is most of the  
13 notification, as the Board members pointed out, under the  
14 plan is made at the alert stage. It's at the alert stage  
15 that the officials take a look at the situation, determine  
16 what their resources are, in terms of manpower, buses,  
17 equipment, anything else they need. The alert stage, of  
18 course, would precede any public notification at the  
19 general emergency stage or the sounding of sirens.

20 And, incidentally, it is my understanding that  
21 sirens are not sounded at the site emergency stage. There  
22 is a reference in the third PID, under the LEA contention  
23 26 which states the circumstances under which the sirens  
24 would be sounded. Sirens are normally sounded in order to  
25 give the public information regarding appropriate

1 protective action and recommendations which, of course,  
2 would follow a general emergency.

3 MS. KOHL: Again, getting back to what Mr. Edles  
4 has said, it sounds to me like we are getting into material  
5 that should have been presented, if not at a hearing, at an  
6 evidentiary hearing, at least in summary judgment matters,  
7 rather than the contention stage. If there was enough  
8 basis and specificity to litigate on overburdened  
9 commercial telephone lines or pyramiding call-up system in  
10 Diablo Canyon and Shoreham, why wasn't there enough basis  
11 and specificity to at least admit the contention here?

12 MR. RADER: Because I don't know that they  
13 considered the point I just am mentioning. That was at an  
14 earlier point and I think we have developed a little more  
15 sophistication --

16 MR. EDLES: What you are saying is there must be  
17 something unique to Limerick that wasn't in those other  
18 cases.

19 MR. RADER: Not unique but just in the plant  
20 itself we are examining. General planning has evolved;  
21 planning is sophisticated. We know we don't wait until the  
22 later stages before we notify people.

23 MR. EDLES: But doesn't the same logic dictate  
24 that we shouldn't rely on what they had in Diablo because  
25 the situation is different? The mere fact that it's

1       satisfactory to Diablo doesn't mean it would be  
2       satisfactory here.

3               MR. RADER: Our plan is even more cautious and  
4       conservative in the approach in providing notification to  
5       the workers. In this situation -- and this is a little bit  
6       different too, Judge Edles, than calling up EOC workers  
7       because you want to get all of them there or most of them  
8       there, and you want to get some of them there instantaneously  
9       so they can implement the plan.

10              Here we are talking about a situation where  
11       approximately 300 guards are going to be on duty during the  
12       middle of the day. I think the Board members asked for a  
13       transcript reference there. If I may, it was 20840. Mr.  
14       Zimmerman stated a majority of guards needed for evacuation  
15       would be on duty during the day, for example 300 during the  
16       middle of the day.

17              MR. EDLES: 300 needed?

18              MS. KOHL: He said 149 would be on duty. The  
19       maximum number on duty.

20              MR. RADER: No. That's something Mr. Love  
21       pulled out of another hearing.

22              MS. KOHL: 20840 is the appropriate record cite  
23       that would tell us how many are on duty. How many would be  
24       needed to implement the emergency plan?

25              MR. RADER: For security reasons Mr. Zimmerman

1 declined to give an exact number.

2 MS. KOHL: More than the 300 that are on duty?

3 MR. RADER: He said a maximum of 300 would have  
4 to be called up but he never put together the two sets of  
5 numbers.

6 DR. GOTCHY: That was confusing. Maybe 600  
7 total you'd need but you'd need 600 people to come in?

8 MR. RADER: I think the inference is it would be  
9 less than that. If the majority on duty are sufficient to  
10 implement the plan and that's 300, obviously you don't need  
11 600. The inference is you'd need 300 plus some, given the  
12 shift that's on duty. And maybe the lowest number shift  
13 you'd need up to 300.

14 MR. EDLES: I admit to being lost at this point.  
15 Can you, without breaching security, give me a rough idea  
16 of how many guards need to be called up? Or is that  
17 something that would take us beyond the security range?

18 MR. RADER: It's something I don't know and it's  
19 something Mr. Zimmerman declined to give for that reason.

20 MS. KOHL: How can we then decide if the state  
21 police can adequately implement the backup system?

22 MR. RADER: Because the state police have --  
23 under the off-site plans which were available and which are  
24 part of the record, the state police have already existing  
25 responsibilities for an off-site response, and largely



1 their responsibilities consist of coordination and  
2 communication.

3 We certainly understand the state police have  
4 broad communicative responsibilities and capabilities.  
5 They certainly wouldn't try and accomplish the job  
6 themselves. Obviously, what they would do if they had to  
7 contact off-duty personnel, they would rely on the local  
8 sheriff and police force and have their units dispatched to  
9 get these individuals.

10 But the basic point we have to focus on here is  
11 the NUREG requirement that an alert notification for worker  
12 systems be in effect. That is in effect. There is a backup  
13 system with the state police. The NUREG requirement has  
14 been met. That requirement is adequate even for emergency  
15 workers. It's certainly adequate for these individuals who  
16 need not respond instantaneously. There are a majority of  
17 the individuals necessary to begin the lockdown, to begin  
18 the assembly team procedures at any given time of the day.  
19 And, therefore, it is not terribly consequential that the  
20 others get there immediately.

21 The plans allow up to four hours for these  
22 individuals to report, in order to meet the evacuation  
23 schedule which was the subject of litigation. So there is  
24 sufficient flexibility in this schedule that it need not be  
25 compressed, in the somewhat instantaneous period that I

1 think Mr. Love anticipates in his contention.

2 We also have to take into account other matters  
3 that were brought up at the prehearing conference which  
4 were offered in an attempt to narrow this concern and this  
5 contention, and that is that not -- this is unlike the  
6 situation where all of the people are coming from the EPZ,  
7 where you are talking about notifying EOC representatives.  
8 Here a majority of the guards live outside the EPZ.

9 DR. GOTCHY: I thought I read somewhere, maybe  
10 supervisory people, about half lived inside the EPZ and  
11 half lived outside the EPZ. It seems I recall reading  
12 something in the record about that.

13 MR. RADER: I can only recall the  
14 representations by Commissioner Jeffes at the prehearing  
15 conferences. I don't think he put a number on it but he  
16 said a substantial number of the individuals live outside  
17 the EPZ.

18 But, in any event, as the Commission also stated  
19 in his immediate effectiveness orders, guards can be  
20 transported from the other facilities if needed. And again  
21 this is something to be evaluated at the alert stage, well  
22 beyond the onset of any evacuation procedures. And if  
23 guards have to be brought in from the other facilities they  
24 can be brought in on the very buses which would transport  
25 the prisoners.

1           These plans are in place. These plans are  
2 undisputed. The buses will be mobilized at the latest at  
3 the site emergency stage. They can be brought to the  
4 prisons. The plans are in place to bring the buses to the  
5 Graterford facility as early as the site emergency stage,  
6 if need be. This, too, is in the plans.

7           And so there are adequate backup and redundant  
8 measures in place to account for any lack of staff  
9 necessary to evacuate this group of individuals.

10          MS. KOHL: Mr. Rader, you only have a couple of  
11 minutes left. I would like you to address something that  
12 hasn't been brought up previously today.

13          What effect does our decision in ALAB 819,  
14 concerning the medical arrangements for contaminated,  
15 injured individuals -- what effect does that have on the  
16 decision that is on appeal before us?

17          MR. RADER: It has none, for this reason. The  
18 decision in ALAB 819 is only with respect to those  
19 arrangements which have been made by the Licensee to secure  
20 medical services in the event its own personnel are  
21 contaminated and injured on-site.

22          MS. KOHL: Doesn't the reasoning, though, apply  
23 with equal validity to medical arrangements for off-site  
24 contaminated/injured?

25          DR. GOTCHY: With regard to the accreditation

1 assumption?

2 MR. RADER: Absolutely not.

3 MS. KOHL: How about the Licensing Board's  
4 statement that we found in the second partial initial  
5 decision that accreditation was good enough, therefore it  
6 is good enough here?

7 As I recall, we differed with the Board on that  
8 and reversed and remanded on that issue, finding that  
9 merely having the accreditation was not enough to satisfy  
10 the regulatory standard.

11 Doesn't that detract from the Licensing Board's  
12 opinion now before us, to the extent it relied on the same --

13 MR. RADER: No. They are completely different.  
14 The reason is this: The Board's finding as to the adequacy  
15 provisions for on-site personnel is governed by the NUREG  
16 06654 standards for medical services criterion L-1, which  
17 requires primary and backup. The Board found, in effect,  
18 that the backup was inadequate because the backup at the  
19 hospital, the University of Pennsylvania, was too distant.

20 The Board said, well, there are 20 other  
21 hospitals in the area and they are accredited. They think  
22 that's good enough as a backup anyway, and the Board said  
23 we don't know what the specific capabilities of those  
24 hospitals are, even though they are accredited, therefore  
25 that's not good enough, got to have a hearing on it.

1           That is different than the situation in which  
2 you are trying to provide support for the general  
3 population. In that circumstance the Commission has stated  
4 in its policy statement on the provision of medical  
5 services that licensing boards are not to adjudicate the  
6 specific capabilities of hospitals which are listed with  
7 regard to those capabilities.

8           MS. KOHL: We are not talking about adjudicating  
9 the capabilities. I just want to know what they are. What  
10 are the arrangements for backup in this case?

11          MR. RADER: Oh, for the general public? Those  
12 arrangements --

13          MS. KOHL: As applicable to the Graterford  
14 facility.

15          MR. RADER: That's contained in the Bucks County  
16 plans. There are about 20 hospitals listed outside the EPZ.

17          MS. KOHL: Had there been arrangements made?  
18 There's a statement in the Licensing Board's opinion, I  
19 believe, and I think it was taken from a filing of the  
20 Commonwealth, that says there are agreements.

21          MR. RADER: That's correct, too. In addition to  
22 that, specific arrangements have been made between the  
23 support institutions, which routinely -- the support  
24 institutions which would routinely assist the Graterford  
25 institution and those which routinely provide service for



1 those.

2 MR. EDLES: Which are those?

3 MR. RADER: Again, they they weren't identified  
4 for security reasons but the Commonwealth did a supply  
5 addenda to its March 15 proceedings in which they stated  
6 they were capable and qualified to treat  
7 contaminated/injured persons.

8 MS. KOHL: All we have here is one letter, one  
9 sentence long, that has most of the information blacked out.  
10 So I don't even know to whom the letter -- it says "Dear  
11 Superintendent blank." And blank hospital, blank  
12 administrator. All it says is that we are a hospital that  
13 is accredited to handle contaminated injured.

14 It does not say, however, that that hospital has  
15 agreed to accept contaminated injured on a backup basis  
16 from the Graterford facility.

17 MR. RADER: Mr. Jeffes stated at the prehearing  
18 conference that those arrangements are in place. I think  
19 Mr. Otto added on that those arrangements are in place on  
20 the basis of a letter agreement and those are based on  
21 agreement to provide ongoing services to prisoners at the  
22 other support institutions, just as Montgomery Hospital  
23 provides routine services for the Graterford prisoners in  
24 this area.

25 So the actual agreements are not in the record.

1 The representations were made the agreements exist. As I  
2 understand it the Commission relied upon that  
3 representation in its immediate effectiveness order stating  
4 the list does exist. The fact that the list exists and the  
5 agreements exist has never been disputed by the Intervenor.

6 The intervenor's concern relates more directly  
7 to the Graterford situation, saying something else has to  
8 be provided in addition to Montgomery Hospital, and our  
9 answer is that's already in place with regard to the  
10 support institutions and the hospitals that support them,  
11 it's redundantly provided for in terms of the hospitals  
12 outside the EPZ that are listed in the Bucks County plans  
13 which identify hospitals' capability of treating injured  
14 and contaminated patients and, moreover, there has been no  
15 showing by the inmates of any deficiency or lack of  
16 capability with regard to Montgomery Hospital, which, as I  
17 said, routinely provide that service.

18 The Commission's policy statement is very clear  
19 that, with regard to other hospitals with which these  
20 arrangements exist, that there is to be no adjudication as  
21 to capability such as Mr. Love had requested.

22 MS. KOHL: Mr. Rader, your time has expired. If  
23 you want to take a minute and sum up?

24 MR. RADER: Well, in summation I would simply  
25 state that the Licensing Board acted correctly in denying

1 the contentions for which Mr. Love sought a hearing for the  
2 inmates. The fact that the Board has relied upon certain  
3 evidence, I think, which concerned you, I think is not  
4 crucial. The crucial point is that the Applicant showed  
5 that it met, or that in this case the correction -- Board --  
6 Department of Corrections met all applicable regulatory  
7 requirements with regard to medical support, with regard to  
8 notification, and that further measures were not required.

9 Thank you.

10 MS. KOHL: We'll take a 10-minute recess.

11 (Recess.)

12 MS. KOHL: Ms. Ferkin?

13 MS. FERKIN: Good afternoon. I would like to  
14 make a very brief introductory statement and then answer  
15 some of the questions that have come up this afternoon, and  
16 then, if possible, progress with my argument.

17 Now, the State Correctional Institution at  
18 Graterford is a maximum security prison, situated a little  
19 over 8 miles from the nuclear -- Limerick nuclear power  
20 plant. In order to meet NRC emergency planning regulations  
21 and guidance, the Pennsylvania Department of Corrections  
22 with the advice and assistance of the Pennsylvania  
23 emergency management agency developed a radiological  
24 emergency response plan for Graterford.

25 The Commonwealth believes that the agencies with

1 daily responsibility for custody and control of the inmates  
2 have provided reasonable assurance that protective actions  
3 can be taken for the inmates in the event of an emergency  
4 at Limerick. Accordingly we believe this Appeal Board  
5 should affirm the Board's partial initial decision and up  
6 hold the Board's June 1985 order.

7 I would like to speak to a couple of points that  
8 have come up in the Board's questions this afternoon.  
9 Mr. Edles, you raised the question of whether or not the  
10 manpower mobilization, the call-up issue, was properly  
11 rejected at the admission of contention stage or whether,  
12 in fact, it was actually litigated.

13 A couple of points, I think, are pertinent to  
14 your question.

15 First of all, the call-up system does in fact  
16 rely primarily upon commercial telephone lines. There is  
17 nothing in NRC regulation or guidance that prohibits or  
18 restricts the use of commercial telephone lines to mobilize  
19 response personnel.

20 MR. EDLES: And I don't think Mr. Love  
21 challenges that at all. I don't think he has problems that  
22 that is the first line of defense, so to speak. His  
23 problem is, that is as he sees it the only line of defense.

24 MS. FERKIN: I have two answers to that. The  
25 first is that is not the only line of defense. There is

1 always, given the fact that this is a security institution,  
2 there is a dedicated line to the state police. We heard  
3 Mr. Rader speak, I think very succinctly, about the  
4 capabilities of the state police. The state police have  
5 the resources and the know-how to mobilize personnel for  
6 support of a state institution.

7 MS. KOHL: Can you elaborate at all for us?  
8 Because, frankly I can't envision how the state police,  
9 which is going to have other responsibilities during an  
10 emergency situation, how they are going to be able to  
11 contact however many off-duty guards might be necessary to  
12 implement the plan at Graterford.

13 MS. FERKIN: Sure. First of all the state  
14 police will be working, as Mr. Rader, noted, if this is  
15 necessary, the state police will work with local police.  
16 They can't do the job themselves. They will work with  
17 local police to make sure that notice gets out to the  
18 personnel who will be needed to respond.

19 There are beeper systems in place, between --

20 MS. KOHL: Do off-duty guards have beepers at  
21 their homes?

22 MS. FERKIN: I can't answer that. I would have  
23 to check with the Department of Corrections on that point.

24 MR. EDLES: Presumably that is not in the record.

25 MS. FERKIN: No, that's not in the record.



1 MS. KOHL: Doesn't all this discussion  
2 underscore the need for hearing on this rather than just  
3 dismissal of this contention out of hand for lack of basis  
4 and specificity?

5 MS. FERKIN: No, I don't think it doesn't. The  
6 point that Mr. Love has raised on appeal as to the reasons  
7 why you need a hearing on this issue, I think, are twofold.  
8 The first is a blanket assumption that he makes that  
9 commercial telephone lines will be overloaded. I think  
10 we've heard discussion to the point that there is no basis  
11 for that assumption.

12 First of all we are dealing in an early stage of  
13 an emergency.

14 MR. EDLES: Isn't that a factual determination,  
15 whether or not they will be overloaded? I mean can we  
16 assume, take official notice that in the fact of a serious  
17 emergency phone lines aren't overloaded? That's  
18 extraordinary, it seems to me to say that.

19 MS. FERKIN: I think we are missing the point  
20 here. You have to look at the procedure for how the  
21 call-up system is implemented. The entire Correctional  
22 Department and the Graterford institution as outlined in  
23 the plan are notified early on in an emergency, at the  
24 alert stage. The off-duty personnel are notified as part  
25 of the alert stage procedures.

1           We are not dealing with a situation where the  
2       general public is being -- is evacuating at this point. We  
3       are dealing with readying resources for a possible  
4       protective action. So you have to keep the stage of the  
5       emergency in mind.

6           MS. KOHL: That isn't really the basis of the  
7       Licensing Board's decision, though, for throwing out the  
8       contention, is it?

9           MS. FERKIN: There was another basis the  
10      Licensing Board proffered. There were several bases. One  
11      was the basis that I mentioned earlier, that there is  
12      nothing -- that commercial telephone lines in effect are an  
13      acceptable means of providing notification. That's one  
14      basis.

15          MS. KOHL: But again, as Judge Edles pointed out,  
16      we don't understand the inmates to be, you know, really  
17      challenging that as a general principle, that there's  
18      nothing in the rules that precludes the use of commercial  
19      lines.

20          MS. FERKIN: I think that is a point though,  
21      that you do have to remember. They have to find -- the  
22      inmates have to find a basis, not only in fact but in NRC  
23      guidance, to raise a challenge to a perfectly acceptable  
24      procedure.

25          MS. KOHL: Well, the NRC guidance is very

1 general. It simply says there has to be adequate means for  
2 notifying people that have responsibilities during the  
3 emergency.

4 MS. FERKIN: Sure.

5 MS. KOHL: And the inmates' contention as  
6 proffered, as I recall, said look, in an earlier part of  
7 this proceeding there was actual testimony that the  
8 commercial phone lines will be overburdened. Therefore, we  
9 challenge whether or not this commercial call-up -- this  
10 commercial phone line call-up system will work effectively.

11 MS. FERKIN: With respect to that earlier  
12 testimony, the Board addressed that testimony in its third  
13 partial initial decision. In effect what the Board said is,  
14 in the context of overall -- in the context of overall  
15 emergency planning, for the Limerick station, that is not  
16 going to be a problem and that the person who gave that --

17 MS. KOHL: Really? Did it really address it in  
18 the context of overall emergency planning? I thought it  
19 was just focused on reaching the EOC personnel. And what  
20 the response was, was that: Yes, we will find a way to  
21 reach those people. The response was not: No, the phone  
22 lines won't be overburdened.

23 MS. FERKIN: I think one of the points the Board  
24 made was that the person who gave this testimony, I believe  
25 he was a supervisor for one of the townships, did not

1 really understand how EOC personnel were going to be  
2 notified to come in to the EOC, and simply didn't have a  
3 general understanding of the notification procedures for EOC  
4 personnel.

5 MR. EDLES: Right. Then --

6 MS. KOHL: Was there any specific refutation,  
7 though, of the notion of his basic premise that commercial  
8 phone lines in an emergency situation will be overburdened?  
9 Is there anything in the record here, anything that was  
10 presented to challenge that notion?

11 MS. FERKIN: As I recall, and I believe his name  
12 was Rick Brown, he was a township supervisor, as I recall  
13 his -- he was recalling experiences from, I believe, the  
14 Agnes flood in 1972. And he was simply using what his  
15 recollection of that situation was, to make the blanket  
16 assertion that in any emergency, commercial telephone lines  
17 will be overburdened and you will not be able to get EOC  
18 people to the response center. And I don't believe that  
19 there was --

20 MR. EDLES: And was the response they wouldn't  
21 necessarily rely on the commercial phone lines?

22 MS. FERKIN: Are we talking about in the third  
23 partial initial decision?

24 MR. EDLES: Right.

25 MS. FERKIN: I believe one of the points the

1 Board made, and I would have to go back and check the  
2 decision on this, but I believe one of the points that the  
3 Board made was that there are other means of alerting  
4 response personnel to come in to the EOC, other than the  
5 commercial phone lines.

6 MR. EDLES: So that they were able to determine  
7 ultimately on the record that there were methods available  
8 to call these people up.

9 MS. FERKIN: And I think we have established  
10 that with Graterford as well.

11 MR. EDLES: Except you have no record at  
12 Graterford. You have just been kicking out contentions.

13 MS. FERKIN: I don't think that's correct. In  
14 order to get a contention into litigation, it is necessary  
15 for the inmates to make a specific -- to raise a specific  
16 issue, to make a specific allegation.

17 MR. EDLES: Right. And here the -- it is argued  
18 that the Graterford off-duty correctional officers will be  
19 called up by telephone. And the inmates come in and say:  
20 It won't work for two reasons, two examples or  
21 illustrations, at least. One, there's testimony back in  
22 the third PID hearing record that the lines will be  
23 overburdened in the event of a genuine emergency; and,  
24 second, sort of a specific -- by the way, at the time of  
25 the Agnes flood in 1972, there was testimony to the effect



1 that there were 30-minute delays in even getting a dial  
2 tone.

3 I don't understand why that isn't specific  
4 enough to raise an issue. I'm not saying that you can't  
5 refute it in due course, but why isn't that enough to raise  
6 an issue as to the adequacy of the phone communication  
7 lines?

8 MS. FERKIN: Well, one reason is that we are  
9 dealing with a maximum security institution. We are  
10 dealing with the Graterford institution which has a call-up  
11 system that is tested on an annual basis. The inmates did  
12 not allege any information to show that this call-up system  
13 hasn't worked in the past, that there is a reason to  
14 question how this particular notification system works.

15 The second point that I think the inmates are  
16 raising on paper is that there is a regulatory basis for a  
17 need for a backup notification.

18 MR. EDLES: Forgetting about precise language,  
19 now. I think what Judge Kohl was mentioning is there is a  
20 regulatory requirement that, if you are going to have to  
21 conduct an evacuation of a maximum security institution you  
22 are going to have to find a way to get people there to  
23 conduct the evacuation. I don't know what number or letter  
24 that is, but that's the gist of it.

25 What they are saying is you haven't shown me

1 that the system that you put in place, this pyramiding  
2 telephone call arrangement, is likely to do that  
3 successfully.

4 MS. FERKIN: The point I would like to make, is  
5 that the inmates haven't shown us a problem with the  
6 Graterford call-up system. They haven't shown us a problem  
7 that these commercial phone lines don't work when the  
8 emergency plan has been tested, the overall emergency plan  
9 for Graterford and the call up system has been tested in  
10 the past.

11 MR. EDLES: Is that their burden at the  
12 contention stage, to affirmatively demonstrate they are  
13 going to win if they ultimately get to litigate this?

14 MS. FERKIN: No one is asking them to show the  
15 boards or the parties they are going to win. We are asking  
16 them for some information, some basis to question the  
17 effectiveness and efficiency of the call-up system.

18 MS. KOHL: What did their contention lack that  
19 the contention that was litigated and decided in the third  
20 PID that we have been discussing here, what did that  
21 contention have?

22 MS. FERKIN: The contention in the third PID had  
23 to do with the time it would take -- questioning the time  
24 it would take to bring emergency response personnel into  
25 the EOC.

1 MS. KOHL: Here they are questioning the time  
2 that it would take to bring in the off-duty officers who  
3 would be needed to fully implement the emergency plan. So,  
4 in both cases we are talking about bringing in people to  
5 help with an overall plan. Why did it have basis and  
6 specificity there and not here?

7 MS. FERKIN: Quite honestly, your Honor, I'm --  
8 I have to dig back into the recesses of my memory to  
9 remember the discussion of admission of contentions of the  
10 third PID. And my recollection is that LEA presented  
11 information, or reasons to question, that satisfied the  
12 Licensing Board at that time that they had a litigable  
13 contention. Quite honestly I cannot recall the details of  
14 LEA's proffer in that case.

15 MR. EDLES: Let's see if I can switch ground for  
16 a minute. Can you shed any light on the seven incidents  
17 that Mr. Love raised, and how he got information in due  
18 course as to three of them but not as to the other four;  
19 and why the information wasn't made available if it wasn't  
20 or what the circumstances were?

21 MS. FERKIN: Sure. Mr. Love wrote a letter, I  
22 believe to me personally, on June 20th, following one of  
23 the conference calls that he had among the parties, asking  
24 for -- and I believe he used the term "logbook information"  
25 -- regarding a number of prior incidents in which he

1       alleged there had been lockdowns and that the lockdowns had  
2       taken a certain period of time.

3               I gave that request to Mr. Otto, who represents  
4       the Department of Corrections. The Department of  
5       Corrections, if that information existed, would have that  
6       information.

7               Mr. Otto informed me and I believe also informed  
8       Mr. Love by phone, and confirmed in the letter of June 27th  
9       that Mr. Rader mentioned, that for some of these -- all of  
10      these incidents, a so-called logbook showing the lockdown  
11      time as Mr. Love was describing just doesn't exist. In  
12      three of the instances there were the memoranda that  
13      Mr. Rader referred to, roughly contemporaneous  
14      memorialization of what happened, and who took what action  
15      when and how long it took.

16              In four of the seven incidents, essentially what  
17      Mr. Raider said before is correct. Any information,  
18      whether memorandum or logbook or whatever, showing lockdown  
19      time simply didn't exist. Either there wasn't a lockdown  
20      for the seven incidents --

21              MR. EDLES: Mr. Rader says he recalls that  
22      Mr. Love ultimately got the information as to the three,  
23      where there were reports compiled.

24              MS. FERKIN: Yes, he did. That was transmitted  
25      to Mr. Love.

1 MR. EDLES: Is there any explanation in the  
2 record that they told them as to the other four they didn't  
3 have any information?

4 MS. FERKIN: I think the June 27 letter that  
5 Mr. Love mentioned is an exhibit in the record and gives, I  
6 think, the fullest explanation. That information as to  
7 those four incidents either wasn't relevant to those  
8 particular incidents or just doesn't exist.

9 I think Mr. Rader's characterization of the  
10 letter is correct. I think it is an Applicant Exhibit.

11 With respect to the July 8 letter that Mr. Love  
12 mentioned, there is, as Mr. Rader mentioned, some  
13 discussion on the transcript about the so-called lack of  
14 receipt of that letter by the Commonwealth. The transcript  
15 clearly shows -- I believe Mr. Otto did most of the talking  
16 on this point -- that we just didn't get the letter.

17 I don't know when it was mailed. I know it was  
18 dated July 8th. I don't know how it was mailed. I believe  
19 Mr. Love mentioned on the record that he had not sent it in  
20 any kind of special mail. We just didn't get the letter.  
21 The hearing was the 15th. I don't recall a phone call from  
22 Mr. Love, telling me what was in the letter, what further  
23 information he was looking for. That's it. And I think  
24 the representations of counsel stand on that point.

25 Now I would like to talk about the two



1 contentions that were actually litigated.

2 MS. KOHL: Ms. Ferkin, you only have a few  
3 minutes left.

4 MS. FERKIN: Basically with respect to the time  
5 estimate, the evacuation time estimate contention, Mr. Love  
6 raised three issues: Is the ETE reliable? We say that it  
7 is. It was prepared by someone and a staff with expertise  
8 and knowledge of what it takes to move an institution like  
9 Graterford.

10 The second question: Does the ET adequately  
11 consider time needed to mobilize supporting manpower and  
12 vehicles? We say it does. Again it's based on experience,  
13 based on knowledge of what it takes to bring vehicles into  
14 Graterford and what it takes to get manpower to Graterford.

15 And the third question that I believe Mr. Love  
16 raise is: Does the ETE allow enough time for a lockdown,  
17 initial organization of the inmates that would take place  
18 as an early step in an evacuation. Again, we think that it  
19 does.

20 Mr. CASE: Mr. Love's witness on the last point,  
21 conceded that what he was really concerned about was  
22 whether the inmates would cooperate, whether the inmates  
23 would know what was happening to them was for their own  
24 good. We mentioned in prehearing conferences, I believe  
25 Commissioner Jeffes has mentioned, that there would be

1 notice over a public address system regarding what was  
2 happening, that the inmates have radios and TV, and finally  
3 that there is information being added to the inmate logbook  
4 to explain to them what would be happening in this sort of  
5 an incident.

6 That satisfied Mr. Case's concern and we think  
7 it satisfies the inmate's concern that a lockdown, an early  
8 part of the evacuation will take place expeditiously.

9 Now, the Board also had a hearing on the  
10 question whether training would be offered to civilian  
11 personnel who might be called upon to help out in an  
12 evacuation. A couple of points I would like to make with  
13 respect to that.

14 First of all, it is clear on the record that  
15 training has been offered to the civilians.

16 MR. EDLES: When you say training has been offered  
17 to these civilians, which civilians are we talking about?

18 MS. FERKIN: I'm talking about the bus companies,  
19 really, generally, the bus companies with which corrections  
20 has an arrangement to provide buses and help out in an  
21 evacuation.

22 MR. EDLES: The record you say demonstrates that  
23 they have indeed received training.

24 MS. FERKIN: It demonstrates they have been  
25 offered training. That's the contention and that's what

1 the record shows.

2 MS. KOHL: What part of the record? Are you  
3 referring to the April letter?

4 MS. FERKIN: I'm referring to the April letter.  
5 I'm referring to Mr. Taylor's testimony in the hearings.  
6 I'm referring to the FEMA witnesses' review of the letters  
7 sent to the companies and the FEMA witness' testimony in  
8 the hearings.

9 MS. KOHL: They just reviewed the letter. They  
10 weren't in a position to know if, in fact, the individual  
11 drivers had been contacted and specifically been apprised  
12 of the availability of the training.

13 MS. FERKIN: That's correct. Our understanding  
14 of Mr. Love's concern all along throughout this proceeding  
15 has been whether or not training would be offered to these  
16 personnel.

17 MR. EDLES: In other words, you think what  
18 Mr. Love had in mind was some offer to them, even if they  
19 didn't take it up. That was all he really cared about, was  
20 the fact that somebody made an offer even if it wasn't  
21 accepted? Do you think that's a sensible reading of his  
22 contention?

23 MS. FERKIN: I think the reading of his  
24 contention is that training, whether training would be made  
25 available. He has a concern with whether or not the bus

1 drivers from the civilian companies would know what kind of  
2 a situation they would be driving in.

3 MR. EDLES: Right.

4 MS. FERKIN: I think his concern was that some  
5 training, some education in what was going on in that kind  
6 of situation would be made available to them.

7 MS. KOHL: Wait a minute, they can't know what  
8 the situation is going to be unless they actually sit in a  
9 room and get the training, can they?

10 MS. FERKIN: No.

11 MS. KOHL: I mean if you just offer something to  
12 somebody and say, hey there's a class that's going to be  
13 held next Thursday evening on your own time, that really  
14 doesn't inform them as to the nature of a radiological  
15 emergency, does it?

16 MS. FERKIN: That's a necessary step to their  
17 becoming informed, if that is theirs, or their company's  
18 wish to know.

19 MS. KOHL: Isn't it a reasonable inference that  
20 his contention was meant to cover more than just the  
21 offering of a training program? Aren't we splitting hairs  
22 here?

23 MS. FERKIN: I don't think we are splitting  
24 hairs at all. I think that the intent of NRC guidance is  
25 that training be made available.

1                   For example, in the case of school bus drivers,  
2                   in this hearing we have --

3                   MR. EDLES: Even if the school bus drivers say  
4                   we are not interested in taking it, we can still make a  
5                   reasonable assurance finding that everything is going to  
6                   work well even if the school bus drivers say we are not  
7                   interested in training? We don't want any training and  
8                   nobody takes it?

9                   MS. FERKIN: The purpose of having drivers, and  
10                  I'm going to go back to the Graterford drivers for a minute  
11                  -- their function is to drive a bus.

12                  MR. EDLES: You are making a slightly different  
13                  argument now. Your argument now is whatever training they  
14                  need they already have because they know how to drive a bus.  
15                  It doesn't matter that they are going to drive into an area  
16                  where there's potentially radioactivity in the area and the  
17                  fact that they are going to be hauling prisoners out of  
18                  there. They don't need any help in that.

19                  MS. FERKIN: That's not the argument I'm making  
20                  though, Judge Edles.

21                  MR. EDLES: Okay.

22                  MS. FERKIN: The argument I'm making is that it  
23                  is the -- the Commonwealth has taken it upon itself to make  
24                  available education, training, in use of dosimeters and in  
25                  decontamination.



1 MR. EDLES: And your position, as I understand  
2 it, is the only thing we need concern ourselves with is  
3 whether or not an offer is made even if, in fact, bus  
4 drivers refuse to be trained, don't want to be trained and  
5 never get trained? Is that basically what I'm hearing? Is  
6 that right?

7 MS. FERKIN: That's not our concern. Our  
8 concern is that the training was made available to the  
9 companies. The companies knew about about the availability  
10 of it.

11 MR. EDLES: Have they taken it?

12 MS. FERKIN: So far they haven't. This isn't a  
13 standing offer. So far they haven't.

14 MR. EDLES: We shouldn't worry about the fact  
15 that these people are untrained thus far, notwithstanding  
16 that you are decent folks and offered to have them trained.

17 It seems to me our concern is when the bus  
18 drivers are going to do the right job when they arrive on  
19 the scene. Obviously making an offer of training is a  
20 necessary first step, but I can't fathom why it's not  
21 important that the bus companies don't want to have this  
22 training for their drivers? I don't understand that.

23 MS. FERKIN: I'll make two points. The first is  
24 that Mr. Love framed his contention. Frankly I can take  
25 Mr. Love back to a point in the prehearing conference where

1     either I or Mr. Otto said to him: What you are concerned  
2     with is that training be made available, be offered? And  
3     Mr. Love said yes. But I don't want to do that.

4             MR. EDLES: Okay.

5             MS. FERKIN: The concern -- Mr. Love framed his  
6     contention: Will training be offered? To me that means:  
7     Will training be made available to these drivers, in case  
8     they are called upon? Training has been made available.  
9     Now, you also have to keep in mind that what they are doing  
10    is driving a bus no more than a couple of miles to simply  
11    get the prisoners away from the EPZ. That's what these  
12    drivers are doing.

13            The training will simply enhance their  
14    understanding of the nature of a radiological emergency,  
15    will tell them how to read a dosimeter if in fact they are  
16    in an exposure situation, and how to monitor themselves or  
17    deal with decontamination monitoring. Those are helpful,  
18    important things to know. Quite frankly, they can drive  
19    the buses.

20            MR. EDLES: What you are basically saying, as I  
21    understand it, is that we can be satisfied and comfortable  
22    with making a finding that there's reasonable assurance of  
23    adequate safety here because we know that the drivers know  
24    everything now, even without the training, that they need  
25    to know to perform their function? That's basically what

1 you are saying, isn't it?

2 MS. FERKIN: What I'm saying is that the  
3 training we are offering can really only enhance their  
4 performance.

5 DR. GOTCHY: Isn't there also an argument that  
6 you made that in the event -- say if they haven't got the  
7 training but they get the bus there, that you can have  
8 these people get some training on the spot while they are  
9 waiting for their buses to be filled in how to read a  
10 dosimeter?

11 MS. FERKIN: That's also possible. On-the-spot  
12 training is possible.

13 DR. GOTCHY: Isn't that in the record?

14 MS. FERKIN: It's certainly in the record in the  
15 proceedings involving school bus drivers. I believe it's  
16 also in this record.

17 DR. GOTCHY: I thought it was part of  
18 Mr. Taylor's testimony, too, that could be done also.

19 MS. FERKIN: I believe he did, and I believe  
20 Mr. Asher stated that as well. I can't be sure of that.

21 DR. GOTCHY: And the other issue was that they  
22 didn't have to have the same degree of training as school  
23 bus drivers because there was going to be a guard there  
24 present to look after the people that he's driving as  
25 opposed to a school bus, where presumably he might be

1 driving a bunch of kids without anyone else around to help  
2 him.

3 MS. FERKIN: I don't think that's really the  
4 issue, the nature or degree of training. Frankly what  
5 Mr. Taylor teaches in his course is really essentially the  
6 same as what PECO's consultant taught the school bus  
7 drivers.

8 MR. EDLES: And he never challenged the adequacy  
9 of the training as long as the drivers get the training, is  
10 his point.

11 MS. FERKIN: I believe that the training has  
12 been made available, will continue to be made available.  
13 That was Mr. Love's contention and we have certainly  
14 answered it.

15 MR. EDLES: Let me ask you --

16 MS. KOHL: Don't the Commission regulations  
17 require more than that, though? 5047 B15 says "radiological  
18 emergency response training is provided to those who may be  
19 called on to assist in an emergency."

20 And planning standard 01, in NUREG 0654, says,  
21 "Each organization shall assure the training of appropriate  
22 individuals."

23 Those seem to be pretty broad requirements that  
24 would apply to these bus drivers and would suggest that  
25 they not only have to be offered the training but they have

1 -- there has to be assurance that it is provided.

2 MS. FERKIN: I would say that the Commonwealth  
3 has satisfied the applicable guidance. One of the reasons  
4 I say that is that --

5 MS. KOHL: 5047 B15 is more than guidance.  
6 That's a regulation.

7 MS. FERKIN: I stand corrected. And the  
8 regulation. My statement still stands.

9 Keep in mind that it's not just the Commonwealth  
10 responding to this contention. FEMA, which I rely upon as  
11 one of the principal interpreters of the Emergency Planning  
12 Guidance, and at least help us interpret the NRC regulation,  
13 reviewed Mr. Taylor's plan for making training available to  
14 these particular civilians. FEMA found it adequate.

15 I would submit that we have responded to  
16 Mr. Love's contention, we have made a bona fide offer to  
17 have these people trained, and I believe that is what this  
18 court should find, that there's reasonable assurance that  
19 such training will be offered.

20 MS. KOHL: Your time has long since expired.  
21 Anything further?

22 DR. GOTCHY: I just had a couple of questions.  
23 In regard to the same issue about training, you point out  
24 that there's training -- has there already been training  
25 given? At page 15 in your brief you mention training has



1 already been given to off-site emergency response personnel  
2 at other nuclear facilities in Pennsylvania.

3 MS. FERKIN: Yes.

4 DR. GOTCHY: Are you aware of whether or not  
5 some of the same bus providers for Graterford have maybe  
6 already received such training as part of an arrangement  
7 for such facility?

8 MS. FERKIN: That is possible. I can't speak to  
9 that.

10 DR. GOTCHY: You don't know. One other question,  
11 I asked someone earlier, and since you are representing  
12 Commonwealth here, it had to do with Superintendent  
13 Zimmerman's testimony. This is at TR20-786 to 87. Maybe  
14 just after that. There was some cross-examination by Judge  
15 Harber, and it appeared to me that he was consistently  
16 indicating that the buses -- that the buses that came from  
17 as far away as 190 miles were not civilian buses but they  
18 seemed to be coming from other state penal institutions.  
19 Is that right? Or not?

20 MS. FERKIN: Let me explain something about how  
21 the buses are being --

22 DR. GOTCHY: It said "institutions."

23 MS. FERKIN: That's correct. What is happening  
24 is the buses -- some buses are department buses. Some  
25 buses come from civilian companies. They are being

1 mobilized to other correctional institutions and dispatched  
2 from those institutions into Graterford.

3 DR. GOTCHY: So Mr. Love was right, then, in his  
4 representation? I believe that's what I said earlier. I  
5 couldn't tell from that testimony.

6 MS. FERKIN: I don't recall what I said earlier  
7 but they are being mobilized at other correctional  
8 institutions.

9 MS. KOHL: Okay. Thank you.

10 MS. FERKIN: May I make one brief summation  
11 statement?

12 MS. KOHL: Sure.

13 MS. FERKIN: I said at the beginning of this  
14 argument that we believe that the Commonwealth has done all  
15 it should do to provide reasonable assurance that the  
16 Graterford plan will protect the inmates. I would repeat  
17 that statement and believe that -- that this Board should  
18 affirm the Licensing Board's orders. Thank you.

19 MS. KOHL: We are going to take a one-minute  
20 break.

21 (Recess.)

22 MR. RUTBERG: Chairman Kohl, members of the  
23 Board. The Staff supports the position taken by the  
24 Licensing Board with respect to denial of the five  
25 contentions and the two contentions that were litigated. I

1 would like to specifically address the call-up question  
2 that has been discussed quite a bit this afternoon, and  
3 state that it's the obligation of an Intervenor to set  
4 forth a contention with sufficient basis and specificity,  
5 which has been mentioned many times this afternoon.

6 The question, in this case, the only basis  
7 relied upon by the inmates relies upon testimony of a  
8 Mr. Brown who testified during the early phase of a  
9 proceeding and conjecture that the telephone lines may be  
10 tied up during an emergency.

11 Mr. Brown specifically, and he forms I think  
12 probably the most solid basis for the contention that the  
13 problem that he experienced in 1972 was limited to his  
14 township, Lower Providence township; that there was a  
15 problem with the switchboard in that township and that that  
16 problem was going to be fixed.

17 The inmates have not tied that particular outage  
18 or delay in the dial tone to any problems associated with  
19 the Graterford --

20 MR. EDLES: Is that the explanation that the  
21 Licensing Board offered when it kicked out the contention?

22 MR. RUTBERG: No. I don't think so. That was  
23 not the basis. But when you go back and look at the basis  
24 the inmates relied upon, that's exactly what took place.  
25 That provides the foundation for the contention.

1 Other than that it's conjecture that during  
2 emergencies, phone lines get delayed or there may be delays  
3 in the phone lines.

4 Next I would like to -- also, in connection with  
5 the call-up contention, reference is made to the need for a  
6 backup system. Mention was made earlier of the state  
7 police. But also in the version 1 of the plan that was  
8 provided to all the parties early in the proceeding, it  
9 also provides for a backup system in the event that off-duty  
10 guards aren't able to be contacted, and that's the  
11 organization known as COMNET, which is an emergency  
12 management team that would be put together in the event of  
13 emergency. It says on page L-1-8 -- E-1-8, that should the  
14 need arise for more personnel the COMNET will supply the  
15 necessary personnel from the Bureau of Corrections SCI,  
16 state correctional institutions. So there is in fact a  
17 backup system to call into the prison in the event that the  
18 telephone system doesn't work.

19 DR. GOTCHY: That's still in Plan 2, I presume?

20 MR. RUTBERG: I haven't seen Plan 2, but I  
21 understand Plan 2 is an enlarged version of plan 1.

22 MS. KOHL: Was any of this information provided,  
23 even in the pleadings and response to the tendered  
24 contentions?

25 MR. RUTBERG: I don't believe so. I can't say

1 for sure that they were or were not.

2 MS. KOHL: It's still hard, a lot of this, when  
3 you say something is conjecture, that sounds a lot like  
4 disputed issue of fact, the sort of stuff that gets you to  
5 a hearing or at the least summary judgment.

6 MR. RUTBERG: But I think in this case where the  
7 primary basis involves an allegation that there is, in this  
8 transcript, testimony that phone lines would be delayed up  
9 to a half an hour, and when you look at that testimony and  
10 it doesn't say that, or at least it may say that they will  
11 be delayed half an hour, but there's an adequate  
12 explanation as to why they'll be delayed a half an hour, I  
13 don't think that would convince a Licensing Board or any  
14 other board to say: Well, this at least provides a basis  
15 for us to go forward to seek out for informatio to find  
16 out whether or not the call-up system in fact is adequate.

17 I would like to address next the question of the  
18 evacuation time estimate, which was a litigated contention.

19 In this case, the inmates have presented two  
20 witnesses to support their contention, plus they  
21 cross-examined the witnesses provided by the other parties.  
22 The Major Case, who was the primary witness presented by  
23 the inmates, did testify that the eight- to 10-hour  
24 estimate provided by Mr. Zimmerman was in fact reasonable,  
25 as far as the things that would be done inside the prison;



1 that the lockdown, the counting, the marching of the  
2 inmates to the loading zones for loading into the buses, if  
3 the inmates were aware of what was going on, how things  
4 were being done, they would cooperate.

5 The record reflects that in fact the handbook  
6 has been modified to provide for information to the inmates  
7 as to what would go on, and at the remedial exercise  
8 conducted by FEMA, they in fact had over the loud speakers,  
9 announcements being made as to what was going on.

10 So I think the witness that was provided by the  
11 inmates would feel that what was being done was being done  
12 properly and could be done in a time frame that the  
13 evacuation time estimate set forth.

14 Furthermore, the problems that the witness had  
15 were with things that were going to be happening outside  
16 the prison. His concerns were transportation of buses to  
17 the prison, and clearly Major Case did not claim to be nor  
18 was he presented as an expert in transportation. The sole  
19 witness that was presented by the inmates on that issue was  
20 Mr. Morris. Mr. Morris, as was said earlier, was not aware  
21 of the use of the ETES. He wasn't aware of the  
22 Commission's regulations or NUREG 0654, and how they are  
23 implemented.

24 MR. EDLES: What effect did that have on his  
25 testimony? What difference does it make if he knew about

1 it or didn't know about it?

2 MR. RUTBERG: Because the whole basis for his  
3 testimony was that you had to do a worst-case analysis. I  
4 guess he had no problems with what would happen under  
5 normal conditions, or adverse conditions. But his concern  
6 was you had to consider would-be problems that developed  
7 during a worst case. It was clear that if he was aware of  
8 our regulations, if he had read NUREG 0654, he would know  
9 that it was not necessary to have a worst case analysis.  
10 In fact, a worst case analysis would throw off any  
11 decisionmaker as to what action should be taken with  
12 respect to the sheltering or evacuation.

13 So, I would think that based upon the evidence  
14 presented by the Intervenors, by the parties to the  
15 proceeding, that the question of the evacuation time  
16 estimate of eight to 10 hours seems to be supported by the  
17 record.

18 Is there any question?

19 The next concern of the parties involved the  
20 issue of training. I think that while there is some  
21 question as to whether Mr. Love proposed a contention that  
22 would deal with the issue of whether the bus drivers would  
23 in fact have received training or whether he was just  
24 talking about whether the training that was being offered  
25 was appropriate, the record does reflect the Board's

1 conclusion that training will in fact be accepted. At  
2 least the Board had reasonable assurance that it would be  
3 accepted.

4 MS. KOHL: Do you agree that there is some  
5 ambiguity and room for difference of opinion as to what the  
6 contention included?

7 MR. RUTBERG: I don't think so. I think it was  
8 the opinion of all the parties, at least as they developed  
9 the testimony, was that what was the inmates' major concern  
10 was the question of the appropriateness of the training.  
11 Clearly when we got to the hearing we understood the  
12 witness for the inmates stated right off that he was not  
13 troubled by the training. He was concerned about the fact  
14 that they may not be accepted; that he suggested that we  
15 needed incentives, financial primarily.

16 MS. KOHL: So by the time you got to the hearing  
17 it was clear, notwithstanding whatever terminology may have  
18 been in the contention itself, it was clear at the hearing  
19 that Mr. Love wanted to litigate and was concerned about  
20 whether or not the training would actually be received?

21 MR. RUTBERG: I think that was clearly the main  
22 thrust of his case at that point.

23 MR. EDLES: From your perspective, though, do  
24 you think you knew that that was an element? Not  
25 necessarily that you knew it was the main thrust of his

1 case, but were you aware in advance of the hearing that  
2 that was at least an element of his case?

3 MR. RUTBERG: I don't think as the parties  
4 prepared the testimony and the 1256 in particular, although  
5 the main thrust for this litigation was put on by the  
6 Commonwealth with respect to the type of training, that the  
7 Staff was prepared to discuss the question of whether or  
8 not the training would in fact be accepted.

9 However, the record does support, as I indicated,  
10 the conclusion reached by the Licensing Board, that there  
11 is reasonable assurance that the training will be accepted.

12 Ms. Ferkin went over many of the points,  
13 primarily the issue that Mr. Taylor, the director of FEMA  
14 was one who personally contacted all the bus companies,  
15 that the training has been accepted at other -- similar  
16 training has been taken by bus drivers at other places  
17 throughout the Commonwealth; and that it will be provided  
18 at a convenient time and place for the bus drivers.

19 However, one additional point should be made,  
20 and that is, the issue did come up during the course of  
21 these hearings whether these bus drivers needed this  
22 particular type of training. The experts, namely witnesses  
23 from FEMA and PEMA, were of the opinion that this  
24 particular type of training was not necessary. The bus  
25 drivers could do their job without this particular type of

1 training.

2 Basically --

3 MS. KOHL: Is there room for that kind of  
4 interpretation, though, given the Commission's regulation  
5 that seems to require that radiological training be  
6 provided to anybody who is called upon to assist in an  
7 emergency? Isn't that so broad that you can't really  
8 decide that this particular group of people don't need  
9 radiologic training?

10 MR. RUTBERG: I believe, first of all, the Board  
11 did conclude that it had reasonable assurance that this  
12 training would in fact be taken.

13 Secondly, the type of training that should be  
14 offered, I believe, under our regulations, would be  
15 training that's appropriate for the particular type of job  
16 that was going to be done by whoever is going to be trained.

17 In this case it would be the bus drivers.  
18 Obviously the bus drivers have the knowledge and background  
19 on how to drive buses. If the situation involved a  
20 possibility of radioactive releases, as was pointed out by  
21 Dr. Gotchy, on-the-spot training could be given with  
22 respect to the reading of dosimetry and related subjects.

23 With respect to an additional problem that the  
24 driver might have, and that is, the taking care of hardened,  
25 dangerous criminals, as Mr. Love pointed out, it is very



1 clear from the record that each bus will be equipped with a  
2 guard, a person trained to deal with these types of  
3 problems. So it's not necessary for the particular drivers  
4 to have training in inmate control.

5 MS. KOHL: Do you think, then, that ad hoc  
6 training in dosimetry, for example, satisfies the  
7 Commission's regulations? Do you think the same court that  
8 decided the guard decision, for example, would find that  
9 that kind of ad hoc arrangement is acceptable?

10 MR. RUTBERG: I think it's not the preferred  
11 approach and the Licensing Board does have, I believe,  
12 adequate assurance that the training will be taken. On the  
13 happenstance that a driver doesn't take the training, I  
14 think that a situation could be developed on an ad hoc  
15 basis and that training could be given.

16 The training is going to be offered, as I  
17 understand it, on an annual basis. So obviously between  
18 any year between a particular program, if there were an  
19 accident and new bus drivers came on the system prior to  
20 the next training session, the only way to deal with that  
21 kind of situation would be on an ad hoc basis and training  
22 those drivers at the particular time.

23 So I believe the record does support the Board's  
24 determination that the training is appropriate and there's  
25 no dispute on that; and that there is reasonable assurance

1 that it will be accepted. However, we have the backup  
2 support system that in the event it's not accepted, there  
3 are measures that can be taken to ensure that the  
4 particular driver will have the necessary training and --  
5 to complete the task.

6 Those are the major points I wanted to make.

7 MS. KOHL: I'm interested in the Staff's  
8 position on the same point I discussed -- I raised with  
9 Mr. Rader, and that's what effect our decision in ALAB 819  
10 with respect to the medical arrangements for  
11 contaminated/injured individuals, what effect that has on  
12 the Board's decision that's before us?

13 MR. RUTBERG: I think first of all, of course  
14 the issue at 819 dealt with on-site planning for  
15 contaminated/injured individuals and we are now dealing  
16 with an issue of concern over off-site and  
17 contaminated/injured individuals.

18 I believe the Commission in its policy statement  
19 did make it clear that with respect to off site  
20 preparations, that all that is required at this particular  
21 time is a list of the hospitals that would be available and  
22 a commitment by the Applicant to comply with the ultimate  
23 regulation that the Commission issues concerning the  
24 off-site medical care.

25 MS. KOHL: Is there any doubt that such a list

1 exists as to the primary and backup care facilities? And  
2 that they would be willing and able to accept and treat  
3 contaminated/injured individuals from the Graterford  
4 facility?

5 MR. RUTBERG: I think there is a doubt as to  
6 whether the primary hospital, the Pottstown Memorial, the  
7 hospital you are talking about --

8 MS. KOHL: I thought the primary hospital for  
9 Graterford was Montgomery.

10 MR. RUTBERG: There's no doubt there is an  
11 agreement between the Montgomery Hospital and the  
12 Department of Corrections to deal with contaminated/injured  
13 individuals at the prison.

14 MS. KOHL: How about backup?

15 MR. RUTBERG: As far as I know the backup would  
16 be -- the other state institutions have agreements with  
17 hospitals to deal with their particular problems, medical  
18 problems at an institution. And these prisoners would be  
19 transferred to these other hospitals and they would be able  
20 to provide whatever backup is necessary.

21 However, I don't know, I don't think our  
22 regulations require that there be a backup hospital for  
23 off-site contaminated/injured individuals. Although in  
24 this case, we have an agreement with a hospital that will  
25 provide the necessary services.

1 I have answered your question before with  
2 respect to Pottstown because Pottstown is the primary  
3 hospital for contaminated/injured individuals on-site and  
4 would be utilized in the event there were off site -- other  
5 off-site injuries that required treatment for contamination  
6 and injury. But there is no agreement as far as I know  
7 between Pottstown and the State Correctional Institution at  
8 Graterford.

9 I have no other observation to make. I think  
10 the Licensing Board, as I stated earlier, was correct in  
11 denying the contentions that were proposed by the inmates,  
12 that the Licensing Board denied them on the basis of lack  
13 of basis and specificity which our regulations provide, and  
14 that the record fully supports the Licensing Board's  
15 conclusion with respect to the two litigated contentions,  
16 namely training and evacuation time estimate.

17 MS. KOHL: I have one question about an issue  
18 that nobody has discussed yet today and this involves the  
19 tabletop, so-called tabletop exercise that was conducted.

20 I believe in your brief you make the argument  
21 that FEMA regarded, I think it was the March 7th exercise,  
22 as a remedial exercise, solely to correct some category A  
23 deficiencies.

24 MR. RUTBERG: That's correct.

25 MS. KOHL: But I read the memo from Mr. Crimm,

1 at FEMA, his March 27th memo, as specifically referring to  
2 that exercise as one that would test the Graterford plan.  
3 And I don't understand how you can argue that it was only a  
4 remedial exercise and therefore one not really directly  
5 affecting the Graterford facility?

6 MR. RUTBERG: First of all I guess FEMA  
7 considered it a remedial exercise.

8 MS. KOHL: That's not the language of their memo,  
9 is it?

10 MR. RUTBERG: I'm reading a memo from Richard  
11 Crimm to Edward L. Jordan, March 27, 1985, the first  
12 paragraph states "On March 7, 1985 a remedial exercise was  
13 conducted at the State Correctional Institution in  
14 Graterford to demonstrate that a portion of one of the  
15 category A deficiencies cited at the July 25, 1984 Limerick  
16 off-site radiological emergency preparedness exercises has  
17 been corrected."

18 MS. KOHL: But the next paragraph -- regardless  
19 of what terminology that uses, in point of fact this was  
20 the first real exercise, was it not, of the Graterford plan?  
21 They didn't have the plan until just a year or so before  
22 this. He goes on to say the reason for this was to "more  
23 fully exercise the emergency response procedures at  
24 Graterford, including simulated evacuation of inmates."

25 MR. RUTBERG: That's correct.



1 MS. KOHL: So it seems to me your argument, as I  
2 understand it, was this was only a remedial exercise,  
3 therefore we don't have to meet any of the various  
4 requirements in the Commission's regulations and guidance.

5 Well, it seems to me in fact and in substance it  
6 was more than a remedial exercise vis-a-vis the Graterford  
7 facility.

8 MR. RUTBERG: I understand what you are saying.  
9 I see where you are headed.

10 The exercise that was conducted at the prison --  
11 let me back up.

12 The reason that the category A deficiency was  
13 found in the first instance was that there was no plan in  
14 July of '84, at least there was no known plan, publicly  
15 available plan, for the State Correctional Institution at  
16 Graterford. Accordingly, the state correctional  
17 institution didn't participate in the July exercise.

18 During the July exercise, it was a full scale  
19 exercise in which the various scenarios that are required  
20 under our regulations were played out.

21 We have in this situation one part of this  
22 overall plan, the plan to deal with the State Correctional  
23 Institution at Graterford, to see whether or not, if there  
24 had been -- if the state correctional institution had  
25 participated in the general exercise, would they have been

1     able to null fill their obligations at that time?

2             So, all that was looked at at the, I guess March  
3     17th exercise -- no, March 7th exercise, was if the State  
4     Correctional Institution had participated in the original  
5     exercise, what would they have done to show that they had a  
6     plan, they knew how to implement it, and it would work?  
7     And that's exactly what they did at this remedial -- quote --  
8     exercise; to see how the plan could be implemented, whether  
9     the authorities at prison knew about the plan, what they  
10    would do in the event of an emergency and could they in  
11    fact implement the plan as it was developed. And the  
12    observers from FEMA concluded affirmatively on all those  
13    issues.

14            MR. EDLES: So it was remedial in the sense that  
15    it was correcting the 1984 overall exercise? That's your  
16    point?

17            MR. RUTBERG: Right. Obviously the State  
18    Correctional Institution didn't participate. If they had  
19    participated, what would they have done? And the exercise  
20    conducted on March 7th reflected what they could have done  
21    in the event that they had participated in the first place.

22            MS. KOHL: It was remedying an omission rather  
23    than something -- I had the impression when I read that  
24    part of your brief that you were referring to some problems  
25    that had been identified and some other aspects of the

1 emergency plan that they went back, corrected, and then  
2 tested again.

3 MR. RUTBERG: No. We didn't mean to make that  
4 impression. It was clear that we were talking about  
5 whether or not the state correctional institution could in  
6 fact implement the plan that they had. That's not the  
7 situation where you might have in the general exercise the  
8 failure to -- of phones to work and then you want to go  
9 back and see: Did the phones work? That was not what we  
10 were trying to suggest here.

11 MS. KOHL: Do you happen to know offhand what  
12 the exhibit numbers are for the various correspondence with  
13 respect to Mr. Love's discovery request? I think  
14 Ms. Ferkin said some of it was an exhibit. I'm not  
15 entirely sure that we have all of that in our regular  
16 record of the proceeding.

17 MR. RUTBERG: An exhibit that I believe  
18 Mr. Rader referred to would be Applicant's Exhibit G-1. It  
19 was admitted on July 15, 1985.

20 MS. KOHL: That was the letter?

21 MR. RUTBERG: That's the letter from Mr. Love --  
22 to Mr. Love from Mr. Otto.

23 MS. KOHL: How about Mr. Love's letter? Were  
24 any of his letters served on everybody?

25 MR. RUTBERG: I have what is marked, and I can't

1 say for sure whether it was admitted into evidence or not,  
2 but it's marked as Graterford Inmates' Exhibit 4. It's a  
3 letter dated July 8, 1985, to Mr. Otto, from Mr. Love.  
4 I'll be glad to make them available to the Board.

5 MS. KOHL: If we know where to look for them  
6 we'll probably find them.

7 DR. GOTCHY: I would just like to get a feeling  
8 for the Staff's position on this. You recall that Mr. Love  
9 was concerned that the remedial exercise really didn't  
10 exercise all of the scenarios which our regulations would  
11 require. The Applicant responded that the exercise  
12 simulated an emergency that results in off-site  
13 radiological releases that would require an off-site  
14 response by authorities and then points out that the  
15 scenario is for an alert. Not for a site emergency or  
16 emergency, but alert.

17 It's my understanding an alert would be declared  
18 according to NUREG 0654, if over a period of two hours  
19 there could result an exposure of one millirem at the site  
20 boundary.

21 Given that Graterford is about 10, or nine miles  
22 from the plant, and the exposures would be infinitesimally  
23 small, how did that scenario result in an adequate test of  
24 the Graterford radiological response plan?

25 MR. RUTBERG: I believe that the FEMA report

1 indicates that they took each step in -- as provided by our  
2 regulations. The first unusual event, next it was an alert.  
3 Finally there was a site emergency. And ultimately there  
4 was a general emergency requiring evacuation.

5 DR. GOTCHY: I see. I meant to ask that of  
6 Mr. Rader. That was what he had briefed and I think all he  
7 mentioned was an alert. I couldn't figure out how they got  
8 from that to something that would really exercise an  
9 evacuation plan.

10 MR. RUTBERG: The report, the FEMA report on  
11 page -- I guess it's page 3 of the copy that I have --  
12 indicates that the alert was received at 12:54; the site  
13 emergency at 13:29; and the general emergency at 14:36,  
14 using military times.

15 DR. GOTCHY: Thank you.

16 MR. RUTBERG: Any more questions?

17 MS. KOHL: No. Thank you, Mr. Rutberg.

18 MR. RUTBERG: Let me just conclude, repeat myself  
19 one more time, that the Staff does support the Licensing  
20 Board's decisions in all respects and requests that it be  
21 affirmed.

22 MS. KOHL: Thank you.

23 Mr. Love, you have 10 minutes of rebuttal time.

24 MR. LOVE: Thank you, I would like to take this  
25 time to clear up as many of the inconsistencies as time



1 permits.

2 Initially with respect to the number of  
3 correctional officers on duty at any one time, Mr. Rader  
4 referred to Mr. Zimmerman's testimony on transcript page  
5 2840. Mr. Zimmerman at that point stated that, for example,  
6 if it occurred -- being an emergency -- during the middle  
7 of the working day we have, I would guess, around 300  
8 persons on-site at the present time.

9 Now, the figures I referred to from a previous  
10 case which you can or cannot take judicial notice of,  
11 evolved the correctional officers. There's additional 300  
12 noncorrectional officer personnel, secretaries, clerks,  
13 receptionists, medical personnel, food service personnel.  
14 I believe a number of these people who are not contemplated  
15 to be used in the evacuation unless there's nothing other --  
16 no one else available included in this number and I stand  
17 by my original figures, which are: 6:00 a.m. to 2:00 p.m.  
18 shift, 146 correctional officers; 2:00 p.m. to 10:00 p.m.  
19 shift, 119 correctional officers; 10:00 p.m. to 6:00 a.m.,  
20 70 correctional officers. This can be found in the case of  
21 Hassan versus Jeffes, civil action 840696, plaintiff's  
22 second set of interrogatories, number 7. That's in the  
23 United States District Court, Eastern District Pennsylvania.  
24 I hope that brings some light to that point.

25 The second point I would like to address is that

1 someone suggested that Mr. Brown's remarks apply only to  
2 Lower Providence township and also that they only apply to  
3 the flood of 1972. I will just quote Mr. Brown and give  
4 you the cite. He states:

5 "Emergency conditions such as a natural disaster  
6 or manmade one are not engineered into servicing  
7 provisioning." And then he further stated, "One need only  
8 look back to the flood of Agnes in '72 to see what havoc it  
9 plays on the telephone network. During the flood dial tone  
10 delays were up to 30 minutes duration."

11 This can be found at TR8226, 18149 and 18133. I  
12 don't see anything in there that limits the statement only  
13 to the Lower Providence situation.

14 With respect to a statement that was made about  
15 Robert Morris, that he was only taking into consideration a  
16 worst case scenario I'll use another quote from Mr. Morris:  
17 "Roadway capacities in the incoming roadways which the  
18 buses will use during entry might be zero due to accidents,  
19 panic, and certainly would be less than the 50 miles an  
20 hours necessary to achieve Zimmerman's estimates." That's  
21 Morris' deposition, page 78-79. I think that clearly takes  
22 into consideration a range of possibilities and not only  
23 the worst case scenario, which would obviously be a zero  
24 capacity.

25 With respect to the medical services situation,

1 I would agree with the recent LEA submission that suggests  
2 that a hearing should also be held on this issue. We are  
3 unsatisfied with much of Dr. Linneman's assertion in his  
4 affidavit and since found out that he is under the employ  
5 of a company that is under the employ of the Applicant.  
6 Thus I think there's a potential for bias which could only  
7 be investigated if we had the opportunity to cross-examine.

8 With respect to civilian training, I note --

9 MR. EDLES: Mr. Love, may I ask you a quick  
10 question, without going into material that is not publicly  
11 available. Is the Montgomery County hospital the only one  
12 with which Graterford has an arrangement?

13 MR. LOVE: That's my understanding of the  
14 factual situation and that's why we continue to insist that  
15 there is no backup in a situation that has been identified.  
16 Somebody said, I think Mr. Rader said several letters of  
17 agreement were produced. My recollection is only one  
18 letter of agreement was produced which Judge Kohl referred  
19 to and that I understand is from Montgomery.

20 MR. EDLES: That makes reference to the fact  
21 that the Department of Corrections has arrangements with  
22 other hospitals in the area insofar as other institutions  
23 are concerned? Is that accurate?

24 MR. LOVE: I don't know that -- my understanding  
25 was they said there was a list of 19 hospitals in the area

1 that were certified by the Joint Commission on  
2 Accreditation of Hospitals.

3 MR. EDLES: That's not what I was driving at.  
4 Maybe I don't understand it. I thought there was also  
5 information in the record that the Department of  
6 Corrections had arrangements with other hospitals for their  
7 routine medical care, for other institutions other than  
8 Graterford. But that those other institutions in the  
9 neighboring area would take Graterford inmates in the event  
10 of an emergency, contaminated/injured individuals.

11 MR. LOVE: I really don't recall that, to be  
12 honest with you.

13 MR. EDLES: Okay.

14 MR. LOVE: With respect to my July 8 letter,  
15 just a little bit of background. It was mentioned as  
16 Graterford Inmates' 4, according to my record. It was a  
17 follow-up letter after we had discussions, as the letter  
18 says, "I am writing to you as a follow-up to our  
19 conversation in Washington, D.C., on July 33, which was  
20 during Mr. Morris' deposition and my previous concern  
21 concerning data during prior emergency situations. Since  
22 these discussions I have received new information regarding  
23 the keeping of logbook entries. Is my understanding that  
24 logbook entries are kept on each cell block A through E at  
25 the institution. Additional reports are made by the major

1 of the guard. It is further my understanding that the  
2 logbooks are kept in the front control room between the  
3 front gates one must enter upon coming into the institution.

4 I also proffer today copies of logbook entries  
5 from another case just to establish the fact that they do  
6 in fact exist.

7 With respect to the exercise I think you did  
8 understand that, the exercise took place on March 7,  
9 because there had been no exercise involving the Graterford  
10 plan, previous exercise on July 25 of '84 was deficient in  
11 that the radiological emergency response plan for  
12 Graterford was not -- did not come forth until December of  
13 that year, so I believe that's why the exercise took place.

14 Just one further remark with respect to  
15 Mr. Romano. Just for the record, I do recall him notifying  
16 the Board in writing of his intention to appear today and I  
17 think that's why he was on the schedule. But I won't make  
18 any further comment on that.

19 In conclusion, if there's no other questions, I  
20 would just like to state that it's my belief and I believe  
21 it is reiterated in the case of Louisiana Power & Light,  
22 Waterford Steam, at 17 NRC 1076, that "a Licensing Board  
23 must confront facts and not just reach conclusions."

24 This is the problem in this case, that this  
25 Licensing Board did not confront the facts of this matter



1 as we believe case law, the evidence, and common sense  
2 dictates. Thank you.

3 MS. KOHL: Thank you, Mr. Love.

4 We thank all the parties for their participation  
5 today. The case is submitted and we will consider not only  
6 the arguments made here today but all of the arguments and  
7 all of the briefs that were filed.

8 Thank you.

9 (Whereupon, at 4:50 p.m., the hearing was  
10 concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: PHILADELPHIA ELECTRIC COMPANY


(Limerick Generating Station,  
Units 1 and 2)

DOCKET NO.: 50-352 OL, 50-353 OL

PLACE: BETHESDA, MARYLAND

DATE: WEDNESDAY, DECEMBER 4, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) 

(TYPED)

JOEL BREITNER

Official Reporter

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