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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
Philadelphia Electric Company)
)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352 OL
50-353 OL

COMMONWEALTH OF PENNSYLVANIA RESPONSE TO
APPLICANT'S MOTION FOR EXEMPTION FROM THE
REQUIREMENTS OF 10 C.F.R. 50.47(a) and (b)
AS THEY RELATE TO THE NECESSITY OF ATOMIC
SAFETY AND LICENSING BOARD CONSIDERATION
OF EVACUATION PROVISIONS OF THE EMERGENCY
PLAN FOR THE STATE CORRECTIONAL INSTITUTION
AT GRATERFORD

By motion dated February 7, 1985, Applicant requested an exemption pursuant to 10 C.F.R. 50.12 from the requirements of 10 C.F.R. 50.47(a) and (b) to permit operation of the Limerick Generating Station at power levels greater than 5% of rated prior to the completion by the Board of its consideration of any contentions which it may admit related to the evacuation provisions of the radiological emergency response plan for the State Correctional Institution at Graterford ("Graterford"). Applicant requests the exemption only for the period of time in which the Commission considers any additional contentions. Applicant Motion at 7.

By Order dated February 8, 1985, this Board directed parties to respond to Applicant's Motion by close of

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business on March 18. See also Order of February 25, 1985. The Graterford inmates filed a response in opposition to Applicant's Motion on March 13.

For the reasons set forth below, the Commonwealth does not support Applicant's request for an exemption from the emergency planning regulations.

DISCUSSION

10 C.F.R. 50.12 in subpart (a) provides that the Commission may grant an exemption from the regulations in Part 50 "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." See Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), CLI-84-19, 20 NRC 1055, 1059 n.7 (1984). Applicant cites the Commission's decision in United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1 (1983) for the proposition that an exemption under Section 50.12 generally is available only in "exigent circumstances."

The Commonwealth agrees that the exigency of the circumstances is significant in making a determination under Section 50.12 as to whether the grant of the requested exemption is in the public interest. As

explained below, the Commonwealth believes that there are not exigent circumstances in this case, and therefore the grant of the requested exemption is not in the public interest.

The thrust of Applicant's concern is that the time needed to litigate contentions propounded by the Graterford inmates may cause "significant delay" in full power testing and operation of Limerick Unit 1. The Commonwealth does not agree that such delay is inevitable. Indeed, since Applicant filed its motion on February 7, the likelihood that litigation of the Graterford matter will be time-consuming has lessened significantly. These changes in circumstances essentially vitiate Applicant's claim of exigency, and thus warrant the exemption unnecessary. See Kansas Gas and Electric Co. (Wolf Creek Generating Station Unit 1), 4 NRC 476 (1976) and Washington Public Power Supply System, (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719 (1977) cited in Clinch River, supra.

First, the pending question of the disclosure of portions of the Graterford plan to inmates counsel and expert is nearly resolved. By way of history, the Commonwealth provided the inmates with an unclassified copy of the radiological emergency response plan for the Graterford institution on December 13, 1984. The inmates subsequently moved for full disclosure of the plan. On

January 29, 1985 the Board orally denied the inmates' motion for additional disclosure, and allowed the inmates 20 days to file contentions based on the version of the plan which they had been provided. The Board issued a written order confirming that ruling on February 5.

On February 12, the Appeal Board denied certification of the Licensing Board's order denying further disclosure of the Graterford plan. The Appeal Board went on, however, to note that the disclosure issue regarding the Graterford plan had developed "rather quickly," and encouraged the parties involved with the Licensing Board's assistance to attempt to find some middle ground that would accommodate the competing interests at stake. See Appeal Board Memorandum and Order of February 12, 1985 at 3.

Prompted by the Appeal Board's ruling, this Board convened an in camera conference in Harrisburg, Pennsylvania on February 27, 1985 attended by counsel and representatives of the Commonwealth, the Pennsylvania Emergency Management Agency (PEMA), the Pennsylvania Department of Corrections, the NRC Staff and the Applicant. As the Applicant itself notes, "[s]ignificant progress was made [at this conference], including a commitment by the Department of Corrections to release certain portions of the plan under protective order identified by counsel for the Graterford Prisoners as critical to their contentions."

See Applicant's Answer to Graterford Prisoners' Petition for Review (March 8, 1985) at 3. Another conference will take place on March 22, following review of the newly disclosed portions of the Graterford plan by counsel for the inmates and his retained expert under protective order. In addition, the Department of Corrections is providing specific information to inmates' counsel and expert as per agreements reached at the February 27 conference. Inmates' counsel and expert will have the benefit of that information in conjunction with their review of the revised plan.

Second, we are now looking at an articulated set of contentions by the inmates. These contentions were filed February 15, 1985 and cover a number of subjects, including evacuation transportation, sheltering, communications, radiological monitoring, security equipment and other matters. Each of the proposed contentions was discussed at the February 27 conference. Although the undersigned counsel has not reviewed the sealed transcript of that conference, that examination would surely confirm counsel's belief that as a result of the conference the proposed contentions were clearly specified and the underlying concerns aired thoroughly. The March 22 conference should resolve any outstanding contentions. If any admissible contentions remain after that conference, the degree to

which the contentions have been discussed to date should preclude the possibility of protracted litigation, and should lead to their resolution well within the expected time frame for this Board's decision on emergency planning contentions and the NRC staff's overall finding of adequacy as to the Limerick offsite emergency response plans. See 10 C.F.R. 50.47(a).

Further, emergency response planning for the Graterford institution has progressed significantly in the month since applicant filed its motion for an exemption. A tabletop exercise of the Graterford plan took place on March 7, 1985. Representatives of the Federal Emergency Management Agency (FEMA) observed the exercise and will shortly provide their evaluation to the Commonwealth. The Department of Corrections expects delivery shortly of security equipment necessary to effect an evacuation of the Graterford institution. Radiological equipment, including dosimeters and potassium iodide (KI), is either currently in stock or on order and due to be delivered within the next month. See generally Response of the Commonwealth of Pennsylvania, Department of Corrections to Requests for Information Raised at the February 27, 1985 Atomic Safety and Licensing Board Conference (March 15, 1985).

In summary, while the Commonwealth is certainly cognizant of the financial consequences of delay to

Philadelphia Electric Company ratepayers and stockholders, the Commonwealth does not believe resolution of the Graterford matter will inevitably delay this Board's decision, and the NRC's ultimate finding, on the adequacy of offsite emergency response plans for the Limerick Generating Station.

The Commonwealth also takes issue with the claim by Applicant that evacuation planning per se for Graterford is not an "absolute requirement." Applicant Motion at 11. Consistent with nuclear incident emergency plans for the general populace in the Limerick plume EPZ, as defined in Annex E to the Commonwealth's Disaster Operations Plan, the Graterford plan provides that appropriate protective actions recommendations will be made by PEMA. Such recommendations could be sheltering, evacuation and/or use of protective drugs depending on the level of emergency and the particular circumstances of the incident. In Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-82-100, 16 NRC 1550, 1566 (1982) cited by Applicant, the Licensing Board explicitly rejected the notion that evacuation plans were not necessary for prisons:

In addition, we are disturbed by the lack of adequate plans for the evacuation of prisoners. Indeed, that the Parish plans consider other protective measures, such as sheltering and protective drugs, in lieu of timely evacuation for this special

population heightens our concern. We do not believe that these other measures should obviate plans for timely evacuation.

The Waterford Board accordingly expressly conditioned issuance of the operating license on development of prison evacuation plans. See *id.* at 1592-93. The Commonwealth plan for Graterford is designed so that the appropriate protective action, e.g., sheltering, evacuation and/or use of protective drugs can be implemented.

CONCLUSION

For the foregoing reasons, the Commonwealth believes that the outstanding matter of the Graterford inmates' contentions will be resolved expeditiously and within the timeframe of this Board's initial decision on emergency planning and the NRC Staff's review of Applicant's full power operating license application. The Commonwealth therefore does not believe exigent circumstances are present in this case and thus does not support Applicant's Motion for an Exemption from the requirements of 10 C.F.R. 50.47 (a) and (b).

Respectfully submitted,


Zori G. Ferkin
Assistant Counsel

Dated: March 15, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Commonwealth of Pennsylvania Response to Applicant's Motion For Exemption From The Requirements of 10 C.F. R. 50.47 (a) and (b) As They Relate To The Necessity Of Atomic Safety and Licensing Board Consideration Of Evacuation Provisions Of The Emergency Plan For The State Correctional Institution At Graterford " were served on the following by United States first class mail on the 18th day of March 1985:

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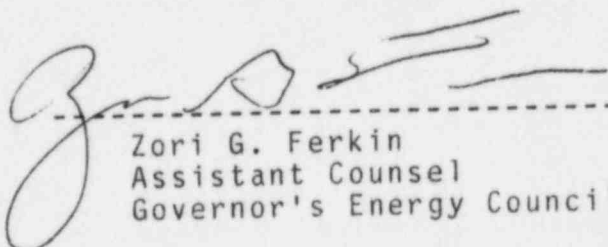
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Date: March 18, 1985