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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

Before the Commission

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In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Station,
Units 1 and 2) : NOS. 50-352 and 50-353 *ok*

INTERVENOR GRATERFORD INMATES' SUPPLEMENTAL PETITION
FOR REVIEW OF APPEAL BOARD ORDER DISMISSING
PETITION FOR DIRECTED CERTIFICATION

I. INTRODUCTION

On February 21, 1985, Intervenor Graterford Inmates filed with the Commission pursuant to 10 C.F.R. 2.786, a Petition for Review of an Appeal Board Order of February 12, 1985, dismiss it without prejudice, the Notice of Appeal filed with the Appeal Board by the Inmates regarding an interlocutory discovery ruling by the Licensing Board set forth in an Order of February 5, 1984. The matters which brought this issue before the Nuclear Regulatory Commission are as follows: On September 18, 1981, the Graterford Inmates filed a Petition to Intervene in the above-captioned matter. On December 13, 1984, the Inmates' attorney received from the Commonwealth of Pennsylvania via the Pennsylvania Bureau of Corrections, an unclassified copy of the radiological emergency response plan for Graterford (heretofore to be

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referred to as Plan 1). After a review of the said plan by the inmates, their counsel and their expert, Major John Case, field director of the Pennsylvania Prison Society, a decision was made to request full disclosure of the Graterford plan. To this end, the Inmates filed a Motion requesting full disclosure which was docketed on December 19, 1984. On January 29, 1985, the Licensing Board, after hearing testimony from concerned parties, denied the Inmates' request for full disclosure of the plan. The Inmates then moved for a stay of their obligation to file contentions within twenty (20) days of the Licensing Board's refusal to request further disclosure. This stay was requested due to a prior Board Order of April 20, 1984, which granted the Inmates twenty (20) days after receipt of the evacuation plan for Graterford in order to submit specific contentions regarding such. The Inmates then appealed the Order of the Atomic Safety and Licensing Board which rejected said appeal on February 12, 1985. The Inmates then moved with the previously mentioned Petition for Review, which was filed on February 21, 1985 before this Honorable Commission.

II. Dispute Additional Disclosures of the Radiological Emergency Response Plan for Graterford, the Intervenors have been Denied the Right to base their Contentions upon Additionally Disclosed Information.

Pursuant to the Atomic Safety and Licensing Appeal Board's suggestion in their February 12, 1985 rejection of the Inmates' appeal, all parties concerned have met twice in an attempt to work out a solution per the Appeal Board's recommendation. Using the auspices of a protective order, the Inmates' counsel and their retained expert, Major John Case, field director of the Pennsylvania Prison Society were permitted to review a second document entitled, The Emergency Radiological Response Plan (heretofore referred to as Plan 2). Said review was conducted at the State Correctional Institute at Graterford, Pennsylvania on March 18, 1985. Present at that time were Angus R. Love, counsel for Inmates, Major John Case, designated expert, and Theodore Otto, counsel for the Bureau of Corrections. Initially, the Inmates note that the second plan represented considerable more detail than the first plan. The first plan was 27 pages long, and the second plan was 86 pages long.

A second meeting was held in response to this issue on March 22, 1985 with all parties concerned meeting in Harrisburg, Pennsylvania. Initially, it was the Inmates' intention to drop the present action as they were satisfied with the further disclosure brought forth by the review of Plan 2. However, during the discussions of the meeting on March 22, 1985, it became apparent that the Inmates would not be allowed to update their previously filed contentions which were based only upon the

information received by the review of Plan 1. Thus, the Inmates continue to request that this Appeal be heard by the Honorable Commission for the previously mentioned reasons and for the reasons cited herein. The purpose of requesting further disclosure of the plan was to obtain a better understanding of said plan as it relates to the Inmates. The initial plan was so vague and uncomprehensive that the Inmates had little or nothing upon which to file their initial contentions. Those contentions were primarily based upon the requirements embodied in 10 C.F.R. 50.47 regarding emergency planning. These contentions were filed only after a stay request allowing the matter to be litigated prior to the filing of any contentions was denied by the Licensing Board on January 29, 1985. The Inmates are now told by the Licensing Board that their original contentions will be the only contentions which will be taken into consideration by said Board.

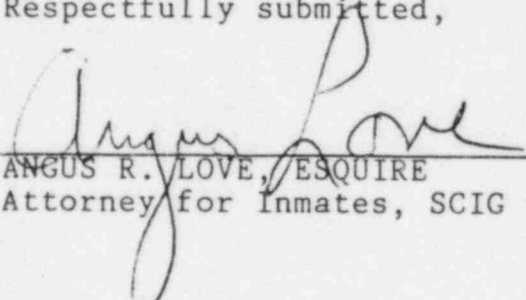
"The contentions were stated in a pleading entitled Proposed Contentions of the Graterford Inmates with Regard to the Evacuation Plan Filed February 15, 1984.⁴

"Footnote 4. We find these contentions to be the sole issue of the inmates. We reject any attempt by the inmates to 'reserve the right to file additional contentions...' if access to an unsanitized plan was granted. (See Memorandum and Order on Graterford Prisoners Proposed Contentions ASLBP No. 81-465-07 OL April 12, 1985.)"

The Inmates protest that the additional disclosure and discussion of said issues will not be given consideration by the Licensing Board, thus they must continue to pursue this appeal.

A possible compromise on this issue was suggested during the meeting by the NRC staff in the person of Donald Hassel, who suggested that the Inmates be allowed to respecify the bases for their contentions in light of the additional disclosure. The Licensing Panel rejected this possible compromise in addition to the Inmates' request to refile contentions. Thus, the Inmates have been denied the right to refile their contentions and the right to respecify the bases for their contentions, despite the allowance of further disclosure, i.e. a review of the Plan 2. For these reasons, the Inmates have no other option but to continue to pursue their request for full disclosure and to supplement said request with a provision regarding the right not only to review the additional information, but to update their initial contentions based upon a review of the second plan. For these reasons the Inmates respectfully request this Board to instruct the Licensing Board to permit contentions based upon the additional information received.

Respectfully submitted,


ANGUS R. LOVE, ESQUIRE
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CERTIFICATE OF SERVICE

I, Angus R. Love, attorney for the Inmates at the State Correctional Institute at Graterford, hereby certify that a true and accurate copy of the Intervenor Graterford Inmates' Supplemental Petition for Review of Appeal Board Order Dismissing Petition for Directed Certification, in reference to the above-captioned matter, was mailed first class, postage prepaid, on April 16, 1985, to the following list:

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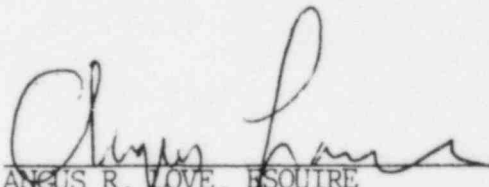
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