

**ORIGINAL**  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

DUKE POWER COMPANY, et al

(Catawba Nuclear Station,  
Units 1 & 2)

Docket No. 50-413 OL  
50-414 OL

Location: Rock Hill, S. C.

Pages: 4177-4455

Date: Thursday, June 7, 1984

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

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In the Matter of: :  
DUKE POWER COMPANY, et al., : Docket No. 50-413 OL  
 : 50-414 OL  
(Catawba Nuclear Station :  
(Units 1 and 2) : ASLBP No. 81-463-6A OL  
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U.S. District Court  
Old Post Office Building  
Second Floor  
Caldwell & Main Streets  
Rock Hill, South Carolina

Thursday, June 7, 1984

The hearing in the above-entitled matter was reconvened, pursuant to recess, at 9:00 o'clock a.m.

BEFORE:

MORTON B. MARGULIES, Chairman  
Atomic Safety & Licensing Board  
  
ROBERT M. LAZO, Member  
Atomic Safety & Licensing Board

\* \* \*

## 1 APPEARANCES:

2 On behalf of Applicants, Duke Power Company, et al.:

3 J. MICHAEL MC GARRY, III, Esq.  
4 ANNE W. COTTINGHAM, Esq.  
5 MARK CALVERT, Esq.  
6 Bishop, Liberman, Cook, Purcell & Reynolds  
7 1200 Seventeenth Street, N.W.  
8 Washington, D.C. 200369 ALBERT V. CARR, JR., Esq.  
10 RONALD V. SHEARIN, Esq.  
11 Duke Power Company  
12 422 South Church Street  
13 Charlotte, No. Carolina 28242

14 On behalf of the NRC Staff:

15 GEORGE E. JOHNSON, Esq.  
16 HENRY J. McGURRFN, Esq  
17 Office of the Executive Legal Director  
18 U.S. Nuclear Regulatory Commission  
19 Washington, D.C. 2055520 On behalf of Intervenor, Carolina Environmental  
21 Study Group:22 JESSE RILEY  
23 854 Henley Place  
24 Charlotte, North Carolina 28207

25 On behalf of Intervenor, Palmetto Alliance:

ROBERT J. GUILD, Esq.  
P.O. Box 12097  
Charleston, So. Carolina

On behalf of the State of South Carolina:

RICHARD P. WILSON, Esq.  
Assistant Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, South Carolina 29211

mn/mn

C O N T E N T S

		<u>Examination</u>			
	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Board</u>
1					
2	<u>WITNESSES</u>				
3					
4	<u>James T. Oliphant</u>				
5	By Mr. Guild	4186			
6	<u>J. T. Pugh, III</u>				
7	By Mr. Guild	4192		4238	
8	By Mr. Wilson		4230		
9	By Mr. Johnson		4232		
10	By Mr. Carr		4233		
11	By Mr. Riley			4246	
12	<u>Marvin Chernoff</u>				
13	By Mr. Guild	4255			
14	<u>Kathleen B. Gordon</u>				4346
15	By Mr. Guild	4308		4338	
16	By Mr. Carr		4326		4347
17	By Mr. Riley				4348
18	<u>James Oliphant(resumed)</u>				
19	By Mr. Guild	4350		4426	
20	By Mr. Riley		4410		4434
21	By Mr. Wilson		4413		
22	By Mr. Johnson		4415		
23	By Mr. McGarry		4416		
24	<u>Luther Fincher(resumed)</u>				
25	By Mr. Carr		4436		
	By Mr. Guild			4441	
	By Mr. Riley			4451	

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C O N T E N T S

(continued)

EXHIBITS

<u>NUMBER</u>		<u>MARKED</u>	<u>RECEIVED</u>
	<u>Staff's Exhibits:</u>		
	No. 3-A [Letter dated 5/8/84 to Jordan from Krimm]	(previously)	4180
	<u>Intervenor's Exhibits:</u>		
	No. EP-51 [Tracking Survey]	4277	----
	No. EP-52 [Report on Chemical Fire]	4442	4442

OFFERS OF PROOF

<u>INTERVENOR'S:</u>	<u>PAGE</u>
No. EP-9, 10 and 51	4277
FEMA 43 document, page N-5	4288

P R O C E E D I N G S

Tl MM/ml

JUDGE MARGULIES: On the record.

Yesterday we had reserved decision on the admissibility of Staff EP-3A, the transmittal letter.

We have had an opportunity to review the letter and compare it with Exhibit No. 3. We find that the differences in it are that the leg of transmittal is extended in EP-3. The document originated with Major P. May and was directed to Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards, SL-NT.

The letter of May 8, 1984 identified as 3A for identification, goes from Mr. Krimm to the Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission.

In terms of the body or the contents of the transmittal letter, the only difference that we see is that the original expected State responses to be filed by April 13th, 1984 and the letter of May 8th, expected the responses to be filed "early this month," which would be early May 1984.

We see no substantive changes and on that basis we will admit 3A into evidence.

(The document previously marked Staff Exhibit EP-3A for identification was received in evidence.)

MR. GUILD: Mr. Chairman, then we would ask that

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1 the author of that subsequent document be required to appear  
2 and respond to cross examination with respect to the  
3 substance of his agency, or his level of the agency's  
4 review and approval of the FEMA Interim Findings to the  
5 extent that this Board intends to rely substantively on that  
6 level of approval of those findings.

7 MR. JOHNSON: Well, the Staff would oppose that  
8 request. The FEMA representatives were proferred for cross  
9 examination and Mr. Guild had a full day to ask questions  
10 on the substance of the findings. And in my experience in  
11 other cases, it is the reviewers and persons like the two  
12 witnesses that were proferred in this case who are offered  
13 for cross examination and not the agency's national director  
14 or assistant director, Mr. Krimm.

15 It seems it is perfectly appropriate for cross  
16 examination to be based on testimony that have already been  
17 proferred and cross examined.

18 MR. GUILD: Mr. Chairman, then my position would  
19 be that the Board's findings should be limited in their scope  
20 to review of the Regional Office review of those Interim  
21 Findings, since that was all that was available to this  
22 Party at the time that the witnesses were proferred.

23 I submit that regardless of who Staff tendered  
24 as witnesses, which is of course of their choosing, that  
25 the scope of the cross examination of those witnesses would

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1 have been more extensive had the Staff at that time offered  
2 the final agency findings.

3 They now so offer, and we consequently ask that  
4 the scope of the examination with respect to those findings  
5 be similarly extended. And it seems logical to me that that  
6 would call for the author of the final findings, or someone  
7 who could be responsive to those findings being tendered  
8 as a witness.

9 JUDGE MARGULIES: These are not the final findings.  
10 It is the same document, just being transmitted, Mr. Guild.

11 MR. GUILD: The distinction I am trying to draw  
12 Judge, Interim Finding is a term of art. And you are right,  
13 it is still the Interim Findings. But, it is, if you will,  
14 the tentative findings of the regional office on that  
15 document, as contrasted with the findings of the agency as a  
16 whole, which is then transmitted to the Nuclear Regulatory  
17 Commission.

18 The substantive significance from our perspective  
19 is that someone else in the Agency has passed on that  
20 document and those findings, and if Staff sees no import to  
21 that subsequent review, I suspect there will be no need to  
22 offer 3A in evidence. They have offered 3A in evidence for  
23 some purpose. If it is relevant at all, then we should be able  
24 to address it by way of cross examination.

25 If it is not relevant it should not be admitted,



,,4

1 and we would oppose its admission on relevancy terms.

2 MR. JOHNSON: Your Honor, the important -- the  
3 essential part of this document is -- and its significance,  
4 is that it is the transmittal of the Federal Emergency  
5 Management Agency of its Interim Findings under the  
6 Memorandum of Understanding between the NRC and FEMA of  
7 Interim Findings which are contemplated by the Regulations  
8 50.47(a)(2) to be considered by this Board in this  
9 proceeding, and to which rebuttal presumption is to apply.  
10 And it is essential to complete the link.

11 What we had up to that point -- I believe  
12 Mr. Cassidy mentioned this document at the appropriate time,  
13 however it wasn't offered at that time. Maybe it wasn't  
14 available here. I see the date is May 8th. I think that  
15 was the date or the day before their witnesses testified.

16 And it is that essential link which gives the  
17 finding its ultimate significance.

18 However, the substance as the Board has observed,  
19 is the same. The weight to be given to it ultimately  
20 in this evidentiary proceeding is somewhat dependent upon  
21 the weight of the testimony that supports it, and the  
22 substantive support for these findings was testified to by  
23 the two gentlemen who did appear. Mr. Guild had a full and  
24 adequate opportunity to go behind the bases for the findings.

25 MR. MC GURREN: Your Honor, let me add that

mm5 1 with regard to the Interim Findings, Mr. Guild had every  
2 opportunity to cross examine the two FEMA witnesses based  
3 upon the Interim Findings. They were available at the time  
4 the witnesses were on the stand. It is the same Interim  
5 Findings.

6 MR. GUILD: Mr. Chairman, what is the significance  
7 of offering the additional exhibit? If it has any substantive  
8 evidentiary value, then we should be able to attack that.

9 It seems to me that if it is simply a matter of  
10 showing mechanical transmission, then it should be admitted  
11 for the limited purpose that we suggested yesterday, and that  
12 is to show not the substance, but to show simply as  
13 transmittal and signature -- its signature in Washington,  
14 its transmittal to the NRC.

15 I have no objection to it being received for that  
16 limited purpose. But, if you are going to attach substantive  
17 significance to 3A, the document itself, then due process  
18 requires that we be given an opportunity to cross examine  
19 with respect to that document.

20 You can't simply stand up, put up a piece of  
21 substantive evidence in thin air, evidence which is going  
22 to be relied on by an adverse party and not provide the  
23 opponent of that evidence an opportunity to cross with  
24 respect to it. That is what he is doing. There is no  
25 witness present, there was no witness present yesterday.

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1 We object.

2 JUDGE MARGULIES: We don't see that the document  
3 changes the substantive record in this proceeding. My  
4 recollection is that the witnesses from FEMA testified as  
5 to the document, and the document just underlies the  
6 testimony.

7 MR. GUILD: With that view, Mr. Chairman, that is  
8 fine.

9 JUDGE MARGULIES: We are ready to proceed with  
10 your case, Mr. Guild. I understand that you have a witness  
11 present, but you want us to await the arrival of Mr. Pugh?

12 MR. GUILD: We have several witnesses present,  
13 and I have made a commitment to Mr. Pugh that we would take  
14 him first this morning so that he could return to Raleigh.

15 He is not yet present in the Courtroom, but I  
16 understand his plane has arrived and he is probably in  
17 transit.

18 We have with us Mr. Oliphant from Carowinds,  
19 among other witnesses, and he expressed an interest to get  
20 on and off. If I could consult with him for a moment off  
21 the record, perhaps we could proceed.

22 JUDGE MARGULIES: You may.

23 (Pause)

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1 MR. GUILD: Mr. Oliphant, would you come forward  
2 and be sworn.

3 Whereupon,

4 JAMES THOMAS OLIPHANT,  
5 was called as a rebuttal witness herein, was first duly sworn  
6 and was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GUILD:

9 Q Sir, would you state your full name and your title  
10 for the record, please?

11 A My name is James Thomas Oliphant. I am the loss  
12 prevention operations manager with Carowinds.

13 Q Carowinds is a theme park, an amusement part, and  
14 it is located within the 10-mile emergency planning zone for  
15 the Catawba Nuclear Station. I believe it is right on the  
16 North Carolina/South Carolina line adjacent to I-77. Is that  
17 a correct description?

18 A Correct.

19 Q If you would please, describe generally what your  
20 responsibilities are in your job, sir.

21 A My responsibilities include the fire, security,  
22 first aid and safety of the park.

23 Q All right, sir. I understand from discovery  
24 documents that I have received from Duke Power Company that  
25 you have had some personal involvement in planning with respect

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1 to a potential emergency at the Catawba Nuclear Station that  
2 might impace your facility?

3 A That is correct.

4 Q Evidence that has been received to date, Mr.  
5 Oliphant, reflects that your park essentially operates during  
6 the summer months. Is that a general statement?

7 A That is correct, from weekends beginning in March  
8 and going six days per week beginning the first week in June  
9 lasting until Labor Day and weekends again until the second  
10 week in October.

11 MR. GUILD: Mr. Chairman and counsel, I am going  
12 to refer to Intervenors Emergency Planning Exhibit Number 25  
13 in evidence. It is by cover letter of Mr. McSwain to Mr. Lee  
14 of the company and attaches some figures with respect to  
15 Carowinds.

16 BY MR. GUILD: (Resuming)

17 Q I want to show this to the witness and ask him to  
18 confirm these figures.

19 A (Perusing document.)

20 Q Mr. Oliphant, these are figures that may have come  
21 from you with respect to the capacities at Carowinds. It is  
22 from Mr. McSwain to Mr. Lee, February 15, 1983. "Attached you  
23 will find the population figures for Carowinds and the PTL  
24 Club," et cetera.

25 Do you know Mr. McSwain? Have you met him?

1 A I do not remember.

2 Q Mr. Lee.

3 A I do know Mr. Lee.

4 Q On the second page of the attachment under number  
5 two, "Carowinds," reflects an average weekday attendance of  
6 9,647. Does that appear to be accurate?

7 A The average weekday seems a little high to me.

8 Q Are you aware of the source of these numbers that I  
9 am showing you?

10 A No, I am not.

11 Q Average weekend, Saturday, 17,868.

12 A That is about correct.

13 Q Sunday, 9,000.

14 A That is correct.

15 Q And a maximum of 36,000.

16 A On the maximum what we do is we have a cumulative  
17 total and we have an in-park total. We go by 26,000 maximum  
18 on the in-park total. We will not exceed that. It is feasible  
19 to get to 36,000 people but never to exceed the in-park  
20 count of 26,000.

21 Q Maximum day, May 8, 1982, would that reflect the  
22 day on which you had that maximum 36,000 total?

23 A That is correct.

24 Q Staff, full-time, 103.

25 A That is correct.

1 Q Seasonal staff, 1200 to 1500.

2 A That is correct.

3 Q Then I think you already mentioned the other data,  
4 open 19 March for weekends to go to six days per week June 6,  
5 correct?

6 A Right.

7 Q August 27 through October 9, weekends only.

8 A That is correct.

9 Q The parking lot is 43 acres?

10 A Yes.

11 Q There are some other figures here, 2.5 hours to  
12 clear park, 1.5 hours to clear parking lot for a total of  
13 four hours to evacuate Carowinds. Do I recall correctly  
14 that the 2.5 hours to clear the park, in other words to get  
15 the people to the parking lot, is a figure that you supplied?

16 A Yes, it was.

17 Q All right, sir. If you would, sir, please tell me  
18 when you first became aware of the planning for the Catawba  
19 facility as it impacted the operations of Carowinds Theme  
20 Park?

21 A I think it was approximately two years ago. I am  
22 not sure of the date.

23 Q How did you come to that awareness, sir?

24 A I believe Mr. Lee, John Lee from Duke Power, contacted  
25 me through Wayne Broome. We had an informal meeting at the

1 park along with some state highway patrol officials.

2 Q What was the subject of the meeting, please?

3 A Just a general overall planning stage of what needed  
4 to be done for the Catawba Plant.

5 Q What did you understand the planning objective to  
6 be as it impacted Carowinds?

7 A Through Mr. Broome and myself and some other  
8 officials, we have come up with I think a workable plan for the  
9 park.

10 Q What is that plan to accomplish, Mr. Oliphant?

11 A In case of an emergency to evacuate the park safely  
12 and remove the people from that area.

13 Q What do you understand would be the cause or the  
14 necessity for that evacuation?

15 A We have elected to move upon Mecklenburg County  
16 Emergency Preparedness Mr. Broome's recommendation on the event  
17 of any happening at the Catawba Plant.

18 Q Would that response be at the same time as Mr.  
19 Broome's and others recommendation was given to the general  
20 public to take action?

21 A No, it would not. It would be beforehand.

22 Q Is that what I would understand perhaps I have heard  
23 others call a precautionary shutdown of the facility?

24 A What my understanding would be on the alert status  
25 and upon Mr. Broome's recommendation, we would go ahead and



1 evacuate if he deemed it to be necessary.

2 Q Have you heard the term precautionary shutdown used  
3 with respect to Carowinds?

4 A No, sir. I can't say. I can't remember it.

5 Q Are you aware of any discussions about the  
6 distinction between the term shutdown and evacuation as they  
7 apply to Carowinds?

8 A No, sir.

9 Q Are you aware of whether or not such a what I will  
10 call a precautionary shutdown, does that accurately describe  
11 what you had in mind?

12 A Yes.

13 Q Are you aware of whether such a precautionary  
14 shutdown would precede the activation of the general alert  
15 system and that is the siren system that has been installed  
16 generally within the about 10-mile emergency planning zone?

17 A It is my understanding that it would be before the  
18 sirens.

19 MR. GUILD: All right, sir. Mr. Chairman, I see  
20 that Mr. Pugh has arrived. If I could ask the gentleman on  
21 the stand, Mr. Oliphant, to stand down and if I could have just  
22 a momemnt, I would like to bring Mr. Pugh around at this time.

23 JUDGE MARGULIES: You may.

24 MR. GUILD: Thank you, Mr. Oliphant. We will get  
25 back to you as soon as we can.

(Whereupon, the witness was temporarily excused.)

1 MR. GUILD: Mr. Chairman, I believe Mr. Pugh has  
2 been previously sworn.

3 JUDGE MARGULIES: That is correct.  
4 Whereupon,

5 J.T. PUGH, III  
6 was called as a rebuttal witness by counsel for Intervenors  
7 and, having been previously duly sworn, took the stand and  
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GUILD:

11 Q Mr. Pugh, for the record, your position, please, sir?  
12 Your job?

13 A Today? I'm the Director of the Division of Emergency  
14 Management. In the context of this hearing I am also the  
15 Manager or Director of the State Emergency Response Team.

16 Q All right, sir. You have been previously presented  
17 as a witness by Applicants, Duke Power Company, et al., and  
18 have testified, the record should reflect, on a number of  
19 contentions.

20 We have sought, by application, the attendance  
21 and testimony of Governor Hunt who has responsibilities under  
22 the plan, and that request was denied, and in the Governor's  
23 stead you have been designated as the senior official presumed  
24 to have sufficient knowledge as to the Governor's involvement  
25 to respond to questions. Do you so understand?

1           A     I so understand.

2           Q     Now, we've talked extensively in the past about  
3 other aspects of emergency planning for Catawba, but in  
4 that context, Mr. Pugh, I want to speak to you about the role  
5 of the Governor principally, and the Governor's role under  
6 the plan.

7                     Now, in the North Carolina plan pursuant to the  
8 requirements of the NRC, particularly, NUREG-0654, there are  
9 assignments of primary and support responsibilities among  
10 various agencies and officials at the state and local level.  
11 Is that correct?

12          A     That's correct. The state level.

13          Q     And I'm looking at the North Carolina plan, Part I.  
14 Do you have a copy of that with you, sir?

15                     MR. GUILD: Do Applicants have a copy they could  
16 share with the witness?

17                     MR. CARR: No, I have one that I'm using.

18                     THE WITNESS: I think Mr. Broome is going to lend  
19 me his copy.

20                     (Counsel handing document to witness.)

21                     BY MR. GUILD:

22          Q     All right, sir. How about turning to page 28, it's  
23 Part I, Figure 4. The table entitled, "Primary and Support  
24 Responsibilities Summary." Do you have that, sir?

25          A     I do.

1 Q Now, is that the part of the North Carolina plan  
2 that sets forth, in a tabular form, the assignments of primary  
3 and support responsibilities among various agencies of state  
4 government?

5 A That is one listing. And I must be quite candid,  
6 Mr. Guild. Since the last time I was at this hearing, I  
7 have not looked at this plan so my familiarity with it has  
8 diminished somewhat. I have been involved in more pressing  
9 matters. Not more important; just more pressing.

10 And I believe, in my recollection, there was also  
11 another listing in that plan, but I don't have a chance to  
12 refer to the plan again. But that certainly is one listing,  
13 you're absolutely correct.

14 Q Well, I'm interested in whether or not this is an  
15 accurate and complete listing of responsibilities. But as we  
16 go through, perhaps you can tell me if you think there's  
17 something that I'm missing, and take a moment to find where  
18 else it might be indicated.

19 But for now, let's look at page 28, Part I. Does  
20 that part reflect as the first element the function of command  
21 and control, and the assignment of primary responsibility to  
22 the Department of Crime Control and Public Safety?

23 A Yes, it does.

24 Q Is there any assignment of support responsibility  
25 for command and control to any other agencies indicated in

1 that table, no.

2 Q Well, is there any other assignment under the plan  
3 of support responsibilities to other agencies besides the  
4 Department, or other agencies or instrumentalities of state  
5 government besides the Department of Crime Control and Public  
6 Safety?

7 A Under the command and control function?

8 Q Yes, sir.

9 A No, there is not.

10 Q Now, I take it that the Department of Crime Control  
11 and Public Safety includes your office, does it not?

12 A That it does.

13 Q With respect to implementation of the Catawba plan,  
14 does it include any other elements of that department besides  
15 your office?

16 A Yes. This will not be an all-inclusive list.  
17 Department of Crime Control and Public Safety includes the  
18 National Guard, the State Highway Patrol, Alcohol Law  
19 Enforcement, Governor's Crime Commission, Civil Air Patrol,  
20 and I know I'm leaving -- there are about 10 agencies in there  
21 and a couple of them are fairly new, so it's not an all-  
22 inclusive list.

23 Q And those 10 agencies, approximately, are all  
24 subsumed within the description, Department of Crime Control  
25 and Public Safety?

1 A That would be correct.

2 Q And do they all have primary responsibilities for  
3 command and control in the implementation of the Catawba  
4 plan?

5 A The primary responsibilities are assigned to  
6 department and not division levels. Under the North Carolina  
7 general statute 143, the Secretary of the Department of  
8 Crime Control and Public Safety has the authority to direct  
9 state agencies to perform certain duties in emergency  
10 situations.

11 And it is under that general statute and 166A  
12 that there is delegated that responsibility to our division.

13 Q And in that division --

14 A I am the division head.

15 Q Right. Now, you also understand, I take it, that  
16 NUREG-0654 requires that the assignments of primary and  
17 support responsibilities be supported by an indication of the  
18 legal authority upon which that assignment is based, correct?

19 A I believe that's correct.

20 Q Now, I'm looking in the state plan, Part I, for  
21 the provisions reflecting that authority. Can you help me  
22 with that?

23 A I-6, Paragraph (c), Department of Crime Control and  
24 Public Safety general statute 144B/473.

25 Q What page are you on?

1 A I-6.

2 Q Is that an appendix?

3 A Part I to Attachment 1. Attachment 1 to Part I,  
4 excuse me. Authorities, references and agreements.

5 Q Okay. Now, you mentioned North Carolina general  
6 statutes 166A(1) and following sections. And that is the  
7 North Carolina Emergency Management Act of 1977, is it not?

8 A That's correct.

9 Q Now, that's the statute that provides for your  
10 office's responsibilities under the plan, correct?

11 A It provides part of our office's responsibilities.  
12 It's not all-inclusive. The 166 law was prepared many years  
13 ago, back when the old Civil Defense Agency or Civil  
14 Preparedness Agency at that time was a separate agency under  
15 state government.

16 Since that time in 1977 I believe, or 1978, when  
17 Governor Hunt came in there was a reorganization of government,  
18 and the Department of Crime Control and Public Safety was  
19 formed under the general statute 143.

20 Q Well as presently codified, 166A(1) and following  
21 sections are the North Carolina Emergency Management Act  
22 of 1977, are they not?

23 A That is correct.

24 Q And that is the most current statutory authority  
25 with respect to assignments of primary responsibility under

1 the plan? Is there a statute after 1977 that you are  
2 aware of?

3 A 143.

4 Q And what year was that?

5 A I don't have a date, but I know it follows 166A  
6 because the department was formed subsequent to 166A. I  
7 think probably 1979, Mr. Guild, I'm not positive.

8 Q All right. In what respect, if any, does that  
9 subsequent statute, 143, affect the assignments of primary  
10 responsibilities under the plan?

11 A It gives to the Secretary of Crime Control and  
12 Public Safety, my immediate supervisor, to authority to  
13 direct all state agencies to respond to an emergency. As  
14 a matter of fact, I believe it says it is either him or his  
15 designate who has that authority. I am that designate.

16 Q All right, sir. Now looking in your same Attach-  
17 ment 1, Authorities, References and Agreements, page I-2,  
18 Item 3, does that reflect the authority of the Governor of  
19 North Carolina for emergency management?

20 A I would say it does.

21 Q Item 5 on the next page, I-3, does that reflect  
22 the powers of the Governor during a state of disaster?  
23 That's what it says, isn't it?

24 A Yes, it sure does.

25 Q I-4, the following page, (b), does that reflect the



1 powers of the Governor with the concurrence of the counsel  
2 of state?

3 A That looks like a pretty good summary, correct.

4 Q And the first item under that assignment of powers  
5 to the Governor with the concurrence of the counsel of state  
6 is to direct and compel the evacuation of all or part of the  
7 population from any stricken or threatened area of the state.

8 A That's correct.

9 Q And is that the power of the Governor as you under-  
10 stand it under the plan?

11 A Is that the power of the Governor?

12 Q Yes.

13 A Or the power of the --

14 Q The power of the Governor with the concurrence of  
15 the counsel of state.

16 A To compel evacuation with the counsel of state,  
17 that is correct.

18 Q All right. Referring back to Part I, Page 28,  
19 Organization, where we have command and control, why is only  
20 the Department of Crime Control and Public Safety listed as  
21 having primary responsibility, or any responsibility, since  
22 there's no support responsibility, when the Governor is listed  
23 in your table of authorities, references and agreements in  
24 the specified sections as having the powers and responsibilities  
25 that we just agreed to?

1           A     Let's go back and do a little maybe a breakout of  
2 state government, that might be in order right now.

3                     There are approximately 17 state agencies that come  
4 under the authority of the Governor and the Governor's office.  
5 The Department of Crime Control and Public Safety is one of  
6 these. And I could go back, I think, and look at 143 and  
7 other general statutes that formed these agencies and give you  
8 a direct reference. But not having the time nor the legal  
9 expertise to do so, I have not done so.

10           Q     All right. What I want to understand is, does the  
11 Governor have command and control primary or support responsi-  
12 bilities in the implementation of the Catawba plan?

13           A     The Governor is -- I refer back to a military term,  
14 if you will, commander-in-chief. He has ultimate responsibility  
15 for what goes on in the state of North Carolina. He also  
16 has the authority to delegate authority to act on his behalf,  
17 which has been done.

18           Q     Well, that's what I want to understand. It's  
19 your view that the Governor has delegated all that authority  
20 and therefore, that is the explanation for why the Governor  
21 is, -- even though commander-in-chief -- is not listed as  
22 having either primary or support responsibility for command  
23 and control in your plan?

24           A     To execute the plan, the Department of Crime  
25 Control and Public Safety is given the primary command and

1 control responsibility.

2 Q By whom?

3 A By North Carolina general statutes and the Governor.

4 Q By the Governor?

5 A Yes.

6 Q And how has the Governor done that? How about  
7 showing me in the table of authorities, agreements and  
8 references where the Governor has delegated that authority,  
9 Mr. Pugh?

10 A I cannot show you explicitly. It is in the general  
11 statutes, Mr. Guild. And I think, under Executive Order --  
12 and I do not have the number -- but the general statutes  
13 do take precedence over an executive order, anyway.

14 Q Well, is there either a statutory authority listed  
15 in your plan, or an executive order or any other documentation  
16 of the Governor delegating his responsibility for command and  
17 control to you or your department or your division, or to  
18 anybody else?

19 A General Statute 143.

20 Q That is your source?

21 A That's the source. And there's probably some  
22 reference in 166A. If given the time I'm sure I could point  
23 it out to you.

24 Q Well, I'd be happy to show you 166A. I have it here.  
25 And 166A does state -- 166A-6, State of Disaster. In addition

1 there is a (c), "In addition, during a state of disaster with  
2 the concurrence of the counsel of state, the Governor has the  
3 following powers: 1) to direct and compel the evacuation..."  
4 et cetera.

5 A Let me also draw your attention to 166A-5,  
6 State Emergency Management. Under subparagraph (2), "The  
7 Secretary of Crime Control and Public Safety shall be  
8 responsible to the Governor for state emergency management  
9 activities."

10 Q Right. "...and shall have the following enumerated  
11 powers..." Right?

12 A That is correct.

13 Q Well, among those powers, is there a power to direct  
14 and compel an evacuation?

15 A No. That's reserved -- the compelling of an  
16 evacuation is reserved for the Governor.

17 Q Directing and compelling an evacuation is reserved  
18 for the Governor?

19 A Putting the two together, direct and compel,  
20 right. That is forcibly evacuating people, unwilling people,  
21 from their homes.

22 Q Well, that's the language of the law, direct and  
23 compel.

24 A Yes.

25 Q Is "direct and compel" defined in the plan, to your

1 knowledge? Or in the statute?

2 A Not to my knowledge.

3 Q So the Governor does retain the responsibility for  
4 directing and compelling the specific protective action  
5 called for in the Catawba plan, and that particular protective  
6 action is the evacuation of the population which are projected  
7 to be affected by the radiation release from the facility  
8 in the event of an accident. "Such a release exceeding  
9 protective action guides."

10 A I lost the meaning of the question in the length of  
11 the question. If you could rephrase it, I'd appreciate it.

12 Q Sure. One of the protection actions that your plan  
13 calls for is evacuation of people who are projected to receive  
14 doses in excess of protective action guides.

15 A That's correct.

16 Q That's a mandatory evacuation. You might even  
17 evacuate people at lower projected doses, correct?

18 A Certainly.

19  
20  
21  
22  
23  
24  
25  
end 3

T4 MM/ml 1

2 Q Now that evacuation, which is a protective  
3 action under the plan, is a protective action for which  
4 the Governor has responsibility under North Carolina General  
5 Statutes, the one I just referenced to you with concurrence  
6 of the Council of State, correct?

7 A There is some confusion, Mr. Guild, in your  
8 interpretation of "compel." And I think the legal intent  
9 of this under the General Statute 166-A, we can't recommend  
10 evacuation, we can take what protective actions that need  
11 to be taken.

12 We cannot, and certainly I would not, espouse that  
13 it should be, that we would have the authority to compel  
14 unwilling people from their homes or to seize their property  
15 as could be done with the concurrence of the Council of State.

16 These are extraordinary powers, and I think it  
17 is only fair and reasonable that they be reserved to the  
18 highest elected official.

19 Q You understand, I think though, and wouldn't dispute  
20 the fact that the potential evacuation of 140,000 people in  
21 the EPZ, or perhaps another 300,000 people in the City of  
22 Charlotte if it is downwind from the plume pathway projected,  
23 is an extraordinary measure? But that is why we are planning.  
24 And that extraordinary measure is reserved, under North  
25 Carolina General Statutes for the Governor. The Governor  
has that responsibility.

mm2

1 A No, sir. Tha is incorrect.

2 The authority to compel -- and I am talking about  
3 actually dragging people from their homes that don't want to  
4 go, yes, that special extraordinary power is reserved to the  
5 Governor as it should be.

6 The actions to take to recommend evacuation is  
7 covered in general in the General Statutes.

8 Q That is where I think the confusion and  
9 contradiction may lie, Mr. Pugh. Where, in the North  
10 Carolina General Statute is first "direct" and "compel"  
11 defined as dragging people unwilling from their homes?

12 I don't mean to put words in your mouth. I think  
13 those were your own words. But, where is "direct" and  
14 "compel" defined as you define it, and that is narrowly, to  
15 put a gun to someone's head and require them with force to  
16 leave their home.

17 Please give me a reference?

18 A I believe I have to refer you to Webster's  
19 Dictionary. I don't have that. But I think "compel" would  
20 say to forcibly remove the individual against their will,  
21 or something like this.

22 Q So your view is that should be commonly understood  
23 by a reader who has reference to the dictionary. It is not  
24 defined in the Statute?

25 A Commonly referred to a reader?

mm3

1 Q Commonly understood by a reader.

2 A A casual reader?

3 Q A reader --

4 A I would certainly think someone with legal  
5 background would understand the difference.

6 Q If that is passing judgment on my legal background,  
7 Mr. Pugh, I will accept the criticism, because "direct" and  
8 "compel" do not seem to have that obvious meaning to me.

9 A No criticism intended.

10 Q It is not defined in the Statute, is it?

11 A No, it is not.

12 Q Now you say that the authority of others, aside  
13 from the Governor with the concurrence of Council of State,  
14 others including yourself and other agencies, to recommend  
15 an evacuation arises or is specified in that same General  
16 Statute, 166-A.

17 Show me where in 166-A the power to recommend  
18 an evacuation is given to your department, the secretary, your  
19 division or anyone else.

20 A Under that subparagraph I mentioned earlier,  
21 166-A-5(2)(b), "Additional authority, duties and responsibili-  
22 ties as may be prescribed by the Governor, and he may  
23 subdelegate his authority to the appropriate members of his  
24 department."

25 Q And that doesn't say anything about recommending



mm4

1 evacuation, does it? But that is a catchall, and you assume  
2 that's where the power resides?

3 A I would argue that is at least one part with a  
4 catchall.

5 Q Is there any place in the Statute of this 166-A,  
6 143 or any other statutory constitutional provision of  
7 North Carolina, that assigns the power to recommend an  
8 evacuation or do other than directing and compel, recommend,  
9 encourage, order, cajole, advise -- any other term you want  
10 to employ short of direct and compel -- to you or your  
11 department, or anyone else but the Governor. And if so,  
12 please tell me.

13 A I think in subparagraph 166-A-5(2), responsibility  
14 to the Department of Crime Control and Public Safety.

15 Throughout this Statute it refers back to the  
16 authorities of the Governor to carry out the emergency  
17 management plan or procedures, if you would.

18 Q Right.

19 A Then, right back at the very beginning, it puts  
20 that responsibility to the Secretary of Crime Control and  
21 Public Safety.

22 Q Responsible to the Governor? That's what it says.

23 A That's what it says.

24 Q Now, between the time of the hearing's last  
25 recess two weeks ago, and yesterday, day before, Tuesday when

mm5

1 we came back, Applicants submitted clarification or change  
2 to the testimony that was prefiled by your Mr. Harris and  
3 yourself.

4           You weren't here yesterday when Mr. Harris  
5 testified. Mr. Harris responded to some questions about  
6 what had been your joint prefiled testimony. But, by letter  
7 of May 30, 1984 which has been received as Applicants'  
8 Emergency Planning Exhibit 21-A, there was submitted what has  
9 been described as a clarification to Mr. Harris' testimony.  
10 And Mr. Harris says that this is a clarification that you  
11 were responsible for.

12           A       Right, that's correct.

13           Q       Do you have a copy of that clarification?

14           A       Yes, I do.

15           Q       Okay, it is a two-page clarification and it  
16 relates to the subject that we are talking about right now,  
17 doesn't it? That is the authority of the Governor, with  
18 the concurrence of the Council of State to direct and compel  
19 an evacuation as contrasted with your view that there is  
20 some other authority to recommend, advise, or effect an  
21 evacuation that doesn't require the Governor's action.

22           A       Let me clean up my view. You asked me if there  
23 is any other reference in the plan. I am kind of scanning  
24 and listening at the same time.

25           Q       Okay.

mm6

1           A       Even under the state of disaster, the Governor  
2 has the authority -- and I speak of the Governor as an  
3 umbrella. I hope you will agree with me that the Statute  
4 gives him the authority to delegate that responsibility  
5 down.

6           Q       I'm not sure --

7           A       Whether we do or not, let's assume you do on this  
8 anyway. Under the General Statute, under the state of  
9 disaster --

10          Q       166-A-6?

11          A       A-6, subparagraph (b)(2), it says, to take such  
12 action -- wrong one.

13                   (b)(3), take steps to assure that measures  
14 included -- wrong one again.

15                   Well, I picked up something, I have lost it now,  
16 Mr. Guild. I'm sorry. It was in there.

17          Q       Take a minute if you had something, Mr. Pugh.  
18 This is important and I would like to see the reference if  
19 you have it.

20          A       Okay.

21                   Number 2. "To take such action and give such  
22 direction to State and local law enforcement officers and  
23 agencies"--I think the "and agencies" I was losing --"as may be  
24 responsible and necessary for the purpose of securing  
25 compliance with the provisions of this chapter and orders

mm7  
1 and rules and regulations made pursuant thereto!"

2 Which means the safety of the people, I think, if  
3 we refer back to them.

4 Q Okay.

5 Anything else you wanted to add on that general  
6 question?

7 A No.

8 Q Okay.

9 Now, back to the correction or the clarification.  
10 Originally your testimony at page 5 said, "Do state officials  
11 had the authority to order evacuation or other protective  
12 action?"

13 Your answer was, "Yes, they do, on issuance of a  
14 declaration of a disaster by the Governor."

15 And Mr. Harris' initials were by that and he  
16 stood cross on that yesterday, and your initials are by  
17 that and I will presume your intent was to sponsor that  
18 testimony as well.

19 A Let me, if I may again, give you some background  
20 on the preparation of this.

21 Q Sure.

22 A This particular contention testimony was done  
23 mostly over the telephone during the first few days of  
24 the tornado disaster. So, there is no doubt that we did  
25 not have the time to go back and study what was written

mm8

1 as thoroughly as we perhaps wanted to at that time, and  
2 this point is one I think that you are obviously -- have  
3 pointed out as being very important, and we wanted to make  
4 sure that it was readily understood by everyone.

5 So, when things began to quiet down a little bit,  
6 we did have time to review what contentions were still out  
7 and to review our testimony, and to try to provide a point  
8 of clarification.

9 Q All right. That is helpful to us, for us to  
10 understand now.

11 The original answer to the following question on  
12 6 then was with whom must they consult, the state officials,  
13 before doing so. The original answer was they must consult  
14 with the Council of State, et cetera.

15 The corrected answer, or clarified answer is,  
16 same question, page 6 there is no requirement that they  
17 consult with anyone.

18 A That's correct.

19 Q All right.

20 And the subsequent answer is what you view as  
21 the correct answer now?

22 A That's correct.

23 Q And then you go on, Must any specific action be  
24 taken before an evacuation can be formally compelled?

25 Yes. And then you go on for a rather long

mm9 1 paragraph to describe what 166-A-6 sets out in the General  
2 Statutes as the process for the Governor with the concurrence  
3 of the Council of State directing and compelling an  
4 evacuation of the citizens, correct?

5 A That's correct.

6 Q All right, sir.

7 And is it your general testimony, although the  
8 Governor has that responsibility, and at least the  
9 responsibility as described in your amended testimony, the  
10 reason the Governor is absent from your primary and support  
11 responsibility summary table under Command and Control, is  
12 that it is implicit that the Department of Crime Control  
13 and Public Safety reports to the Governor?

14 A That's correct.

15 Q All right, sir.

16 Now let's turn for a moment to your practice and  
17 your experience in regard to the Governor's personal  
18 actions under an emergency response circumstance.

19 Has the Governor ever declared a state of disaster  
20 in North Carolina?

21 A He did so about March --

22 Q During the tornadoes?

23 A Yes, 20th, 29th. Prior to that there has been  
24 one in Surry County in 1979. Prior to that, one in Western  
25 Carolina mountains in '77, and there may have been some

mm10

1 in between.

2 Q All right. So it is an infrequent occurrence,  
3 and one that is reserved for major disasters, major emergen-  
4 cies, things that affect substantial numbers of people,  
5 large amounts of property?

6 Is that a fair general description?

7 A I think that is fair.

8 Q If you are not absolutely all-inclusive, three  
9 or four over the last maybe ten-year period of time?

10 A I think that would be it.

11 Q How long have you been in your position, Mr. Pugh?

12 A Six years.

13 Q So you would have some knowledge of others --

14 A Let me correct that. Not in my position for six  
15 years, but with the division I am with now. Not in my  
16 position for six years, but with the division for six years.  
17 In my position for about two.

18 Q Okay.

19 In the six years you have been with the division,  
20 you would have knowledge of declarations. They would come  
21 to your attention, right?

22 A Not necessarily, Mr. Guild. When I was out in the  
23 field office as an area coordinator, I can't imagine me not  
24 being aware of it, but the possibility does exist.

25 Q This gives you a pretty good -- I am not going to

mm11

1 hold you to it -- but it is a pretty good recollection of what  
2 declarations have happened.

3 All right, sir.

4 A Let me clarify something else, also.

5 That is not including agricultural type disasters.  
6 That is a different process altogether. There have been  
7 several of those and I can't even recollect if that was  
8 declared. I know last summer during the drought, the summer  
9 before because of probably some freezes.

10 But, it really has no bearing on what we are  
11 talking about.

12 Q All right. And it is not under the statute, under  
13 a different statutory authority?

14 A It is under this statutory authority.

15 Q Oh, it is?

16 A Yes, sir.

17 Q All right. Certainly doesn't involve movement  
18 of people in the sense that --

19 A It is a much smaller and more agricultural type  
20 disaster. It would be mainly to get Federal assistance.

21 Q All right.

22 Now, since you have held the position of Director  
23 of your division, I gather that there would be the one  
24 instance in the spring of this year where the Governor declared  
25 a state of disaster material to this plan.



mm12

1 A Yes, I would agree.

2 Q Tell me, to your knowledge how the Governor  
3 participated in implementing the responsibilities for  
4 declaration of a disaster in this most recent tornado  
5 incident.

6 A I think we would have to look back at the situation  
7 of a tornado versus some other emergencies.

8 North Carolina powers can be acted or enacted  
9 without a state of disaster. And it somewhat differs,  
10 Mr. Guild, I believe, from South Carolina laws and  
11 regulations. We have to make sure, though, there is a very  
12 clear and defined difference there.

13 Q Okay.

14 A We have an emergency plan and we can enact that  
15 emergency plan without a formal state of emergency or  
16 disaster. It is not necessary under our procedures and  
17 regulations and statutes.

18 In North Carolina the formal state of disaster --  
19 and by being formal, I mean we got around to writing it  
20 down and sending it forward to the President -- was about  
21 on the 30th of March. However, the enactment of the State's  
22 emergency procedures and plans began about 9 o'clock on  
23 the evening of March 28th, as soon as we received notification  
24 of the first tornadoes. And, please don't hold me to these  
25 dates because I don't have my log in front of me.

mm13

1 Q Just to the best of your recollection?

2 A Yes.

3 Q Fine.

4 All right. When the final proclamation of disaster,  
5 of the state of disaster was issued, was that after the  
6 statutorily prescribed concurrence of the Council of State?

7 A No.

8 Q Did that happen?

9 A Not to my knowledge. The only reason for  
10 formally declaring a state of disaster was to insure the  
11 receipt of Federal disaster assistance.

12 Q All right.

13 A The Governor acting under his own statutory  
14 authority, we could have handled within the State of  
15 North Carolina, the whole emergency situation without ever  
16 declaring a state of emergency or disaster.

17 Q All right. But a state of disaster was declared  
18 in that instance?

19 A Yes, it was.

20 Q And was it under 166-A-6, that authority?

21 A At least that. It may have been some others,  
22 Mr. Guild.

23 Q Help me to understand how under 166-A-6, the  
24 Governor did what he did in the tornado instance. Does  
25 the declaration precede, and not require the concurrence of

mml4

1 Council of State?

2 A Pardon?

3 Q Does the Governor's declaration precede, and not  
4 require the concurrence of Council of State?

5 A That's correct.

6 Q All right. So it is action after the declaration,  
7 among others, to direct and compel evacuation that requires  
8 concurrence, is that right?

9 A That's correct.

10 Q Was there any action taken in the tornado  
11 circumstance, that required concurrence of the Council of  
12 State?

13 A None that I am aware of. Some of this may be  
14 going on. I see on page 1 -- well, you don't have it.  
15 166-A-6, subparagraph (5), to use the contingency emergency  
16 funds as necessary.

17 It is my understanding -- and that has been  
18 handled through our accounting people, not through me  
19 personally -- that probably some of these C&E monies have  
20 been used, and that would be with the concurrence of Council  
21 of State.

22  
23  
24  
25  
End 4  
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#5-1

1 Q Do you know whether that concurrence was given?

2 A I can rested assured that if they are using the  
3 money, it has to be because that is a standard procedure.

4 Q Then what I would like to understand is if the  
5 Governor did have to get the concurrence of the Council  
6 of State to do one of those enumerated emergency actions  
7 powers and the one that comes to mind being used of  
8 contingency and emergency funds, tell me how he got the  
9 concurrence and in what timeframe it occurred in after  
10 the declaration.

11 A I can't --

12 MR. CARR: Your Honor, excuse me. I think I am  
13 going to interrupt at this point and interpose an objection.

14 MR. GUILD: I think the answer was he didn't know  
15 and that certainly satisfies me, Mr. Chairman.

16 BY MR. GUILD: (Resuming)

17 Q Is that correct, Mr. Pugh, to save us some time?

18 A I don't know but this is a clean-up action and not  
19 an emergency action.

20 Q Are there any other emergency powers that you are  
21 aware of, Mr. Pugh, that were exercised in that or any other  
22 circumstance that you have knowledge of that required the  
23 Governor to obtain concurrence of the Council of State?

24 A No.

25 Q What was your involvement in getting the Governor's

1 declaration of a state of disaster and accomplishing the  
2 emergency actions that you are aware of?

3 A The formalized document was prepared by my office  
4 and forwarded to the Governor's Office for concurrence and  
5 signature. I must say that was done by my staff when I was  
6 out doing some damage assessment with some federal people so  
7 it was a joint effort.

8 Q Under your supervision but not with your direct  
9 personal involvement?

10 A Under my supervision but I can't tell you that I was  
11 in the office when it happened because I was not.

12 Q Did you have any personal contact with the Governor  
13 with respect to the declaration of a disaster?

14 A I had quite a bit of personal contact with the  
15 Governor during that time. He was very interested in making  
16 sure that disaster assistance got the people as soon as  
17 possible. I can tell you for a fact that he was probably  
18 the damage locator that I had in the State of North Carolina  
19 because if there was any damage anywhere, he found it. He  
20 was immediately on the telephone to me wanting to know why  
21 we weren't there doing some work.

22 Q So he had considerable personal involvement in the  
23 emergency response that was involved?

24 A He was almost actually a victim himself. He was in  
25 the county during the time of the tornadoes.

1 Q Is it fair to say that it is the policy of the  
2 Governor of North Carolina to become fully involved in his  
3 responsibilities as commander-in-chief and responsible for  
4 the full emergency management effort in the way he did in the  
5 tornado situation?

6 A I believe it is fair to say that he takes a  
7 responsible role but he allows people who he has trust and  
8 confidence in to carry our the nuts and bolts of running the  
9 operational organization.

10 Q Fine. But he also involved himself in this instance  
11 in as you say damage identification. You heard from him  
12 personally about the need to take emergency response actions  
13 in terms of his identification through others of the need to  
14 provide funds and assistance among other thing?

15 A That is correct.

16 Q Having that level of personal involvement, what I  
17 would like to know is tell me what personal knowledge you have  
18 of how the Governor specifically took the steps necessary to  
19 declare a state of disaster?

20 A I am not familiar with what steps you are referring to.

21 Q What I want to know is you were out in the field,  
22 the proclamation was prepared by your people. Did you call the  
23 Governor when you heard there was a tornado touching down  
24 and say, "There is a need, Governor, to in my opinion declare  
25 a state of disaster. My people are preparing a proclamation

1 for your signature. I will bring it by. Yes, we can discuss  
2 the projected amounts of damage and need for response." I am  
3 just paraphrasing but tell me what happened to your knowledge  
4 that got the Governor involved.

5 A Let me back off a little bit. There was no action  
6 that we needed to take or being requested of us that would  
7 require a formal proclamation of emergency or disaster.

8 Q So one wasn't made?

9 A Yes, one was made. I said earlier one was made as  
10 a prerequisite at this time to obtain federal assistance.

11 Q All right.

12 A This is how I know that there is a difference in the  
13 two state's rules and regulations and we have to realize that  
14 that exists. If I remember correctly, Governor Riley in  
15 South Carolina issued a state of emergency fairly promptly  
16 because he had to so that he could do some emergency things  
17 under South Carolina law. We were not restricted by those  
18 same statutes. We have a lot more freedom in committing  
19 state resources without going through the formalized process.

20 Q I guess my problem, Mr. Pugh, is I don't have  
21 available your knowledge and your experience and that is the  
22 purpose of having you testify to find this out. What I have  
23 available is the North Carolina general statutes which I have  
24 read and your plan which I have read. To be frank with you,  
25 I don't see the material differences by comparison of the

1 South Carolina plan with respect to this issue, the South  
2 Carolina statutes with respect to this issue and the North  
3 Carolina plan and the North Carolina statutes with respect  
4 to this issue. Yet, just as you state, in South Carolina  
5 according to the testimony of Mr. Sanders of the Governor's  
6 Office, the Governor responded within a matter of an hour  
7 or so and issued a state of emergency executive order.

8           Is it fair to understand that it is your interpreta-  
9 tion of these statutes and the custom and practice in North  
10 Carolina that accounts for the difference in the practice?

11           A     In my interpretation of the statutes?

12           Q     Yes.

13           A     No.

14           Q     Then what is the difference? What accounts for the  
15 difference?

16           A     I don't interpret the statutes. If we have any  
17 question, they are interpreted by the attorney general.

18           Q     I don't mean your personal interpretation, Mr. Pugh.  
19 I mean the interpretation of those who implement them. Tell  
20 me what accounts for the difference because frankly the  
21 difference is not apparent in either the plans or the  
22 statutes from my perspective. I would like to know what the  
23 explanation is.

24           A     I have not reviewed in detail nor do I intend to  
25 review in detail all of South Carolina's rules and regulations.



1 I know in general what the North Carolina rules and  
2 regulations allow us to do. Mr. Lunsford and others would have  
3 to speak for South Carolina. I can't do that.

4 Q I will break it out as simply as I can. What else  
5 do I need aside from your personal knowledge and experience  
6 telling me what actually happens in North Carolina, what else  
7 do I need to understand what the Governor's real role is  
8 or specified role is other than your general statutes which  
9 I have looked at and in respect to what will happen in a Catawba  
10 emergency the Catawba plan, the North Carolina Plan and the  
11 various supporting plans, what else do I need to have a clear  
12 understanding of why the Governor's response in North Carolina  
13 is so different than it is by comparison to South Carolina?

14 MR. CARR: Your Honor, I am going to object at  
15 this point. Mr. Pugh has been here now for 40 minutes. We  
16 have been talking about this point. His testimony is very  
17 clear. He has explained how the State of North Carolina  
18 operates under its emergency plan. Now if Mr. Guild wants a  
19 briefing by the attorney general on the precise statutory  
20 authority and the executive orders issued by the Governor, then  
21 he can call the attorney general's office and talk to somebody.

22 I believe that this record is very clear at this  
23 point how this authority works and how it is exercised. I  
24 don't think we need to continue to belabor this point.

25 MR. GUILD: Mr. Chairman, if Mr. Carr is through making

1 his speech about what he thinks the evidence reflects, I  
2 maintain, sir, that as our contention alleges there is  
3 considerable confusion, lack of clarity and lack of  
4 coordination apparent, apparent sir, in holding up what the  
5 plan says are the assignments of primary and support  
6 responsibility in this regard. What the general statutes,  
7 the only authorities that I see referenced in those plans  
8 say are the legal basis for the assignments of authority  
9 and responsibility in this regard and what Mr. Pugh candidly  
10 tells us actually happens as compared to very similar  
11 statutory authority, almost directly word-for-word, "direct  
12 and compel" and the plan in South Carolina.

13 Now the last question tries to get to the nub of it.  
14 That is, if the explanation lies aside from actual practice  
15 which I believe the gentleman has been forthright about,  
16 the explanation lies in some other statute or authority or  
17 provision of a plan or executive order and that will clarify  
18 this confusion and apparent contradiction, then I ask the  
19 gentleman to cite me to it.

20 If there is none and we should instead rely on  
21 the difference of interpretation and actual practice, then  
22 the record should reflect that. But I think the question needs  
23 to be answered because despite Mr. Carr's glowing view of  
24 how clear the record is on these points, I submit the record  
25 is as confused as we have maintained from the outset it would be.

1 JUDGE MARGULIES: That is your bottom line question.  
2 You want to know if there is anything additional.

3 MR. GUILD: That is correct, Mr. Chairman.

4 JUDGE MARGULIES: You may answer the question.

5 WITNESS PUGH: Mr. Guild, the only thing that comes  
6 to mind and this is not the bottom line if you will because  
7 I am sure there are several general statutes that impact on  
8 what the Governor can or cannot do is an executive order  
9 and I can't give you the number of it, it pretty well  
10 paraphrasing general statute 166-A. It just kind of  
11 reemphasizes it.

12 BY MR. GUILD: (Resuming)

13 Q Mr. Pugh, could I ask you to do this, please?  
14 Would you kindly at a later time, I don't intend to ask you  
15 about it, but would you submit that executive order for the  
16 record so that we may include it to have a complete record  
17 in this matter?

18 A If there is no objection, I have no problem with that.

19 JUDGE MARGULIES: Just a moment, counsel. In terms  
20 of handling that matter for the record if it is to come into  
21 the record, we want some means of identifying it and placing  
22 it in the record.

23 MR. GUILD: Your Honor, I would like an opportunity  
24 to receive the executive order and to examine it and then to  
25 offer it. We could notice of it. It seems to be an official

1 action with legal stature. If it would be suitable to the  
2 Chair, we could ask that it be given a number for identifica-  
3 tion.

4 (Board conferring.)

5 JUDGE MARGULIES: What we will do, Mr. Guild,  
6 is require that the document be submitted ten days from today.  
7 When it is received by us with copies to all parties, we will  
8 assign the next exhibit number to it and receive it into  
9 evidence.

10 MR. GUILD: I am afraid I don't have the next  
11 number.

12 JUDGE MARGULIES: We will take the final number. We  
13 will not reserve a number for it.

14 MR. GUILD: Thank you.

15 BY MR. GUILD: (Resuming)

16 Q Mr. Pugh, under your plan and in compliance with the  
17 NRC's regulation, NUREG-0654 planning standards, you have a  
18 responsibility for providing for the training familiarization  
19 of those persons who are responsible under the plan with  
20 the plan's content and in addition with whatever necessary  
21 information they need to implement the plan, right?

22 A I will assume that is in there, Mr. Guild. I  
23 really can't remember. It has been done so I don't worry  
24 much about it.

25 Q Say again.

1           A     It is part of our on-going process so whether it is  
2 called for in the reg or not, I can't tell you.

3           Q     I will submit to you that it is and I am directing  
4 your attention to part one of the North Carolina plan  
5 beginning at page 94 entitled, "Plans, Exercises, Drills and  
6 Training." Page 99 in specific states, "State and local  
7 governments will conduct radiation emergency response  
8 training for personnel scheduled to operate within the plume  
9 and ingestion exposure pathway EPZ's. Refresher training  
10 will be conducted on an annual basis commencing with  
11 individual training and culminating with a field exercise."

12                   There are other provisions that provide likewise  
13 for training of persons responsible under the plan. What I  
14 am interested in is specifically with respect to the Governor  
15 of North Carolina, Governor Hunt at present. Governor Hunt  
16 has been in office for almost eight years, is that correct?

17           A     That is correct.

18           Q     All right. He has been in office certainly during  
19 the entire planning process for Catawba?

20           A     That is correct.

21           Q     Has the Governor read the North Carolina plan and  
22 its various components?

23           A     I cannot tell you specifically he has read this  
24 plan. I can tell you about seven years ago or shortly after  
25 the Three Mile Island incident and this is prior to the

5-11

1 publication of NUREG-0654 directed our department to begin a  
2 very in depth planning process for nuclear power plants. At  
3 that time there was a very general plan that had been  
4 prepared by another state agency but really was not all  
5 inclusive of the responsibility or resources available to the  
6 state.

7           So at that time we began a plan for the Brunswick  
8 nuclear facility. What guidelines, I really can't tell you,  
9 Mr. Guild. This was about the time I went to Raleigh in a  
10 different position. It would be about 1979 and they were  
11 still working on it. That plan was developed. It was tested  
12 and found at that time to be adequate as far as the Governor  
13 was concerned. NUREG-0654 came out after that time and the  
14 plans had to be redrawn to meet those specific criteria listed  
15 in there and at that time it was exercised again and I think  
16 probably back at Brunswick. That plan at that time which by  
17 the way was prepared by Mr. Harris and other staff members  
18 and if you will recall, Mr. Harris was here yesterday, became  
19 the basic policy if you will for the State of North Carolina.  
20 Each plan, of course, has to be adjusted according to the  
21 counties and different locale but the general policies and  
22 positions for the State remain constant throughout.

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1 Q Now we have 0654, and since at least the last  
2 couple of years, we have a plan for Catawba. Do you have  
3 any knowledge of whether the Governor has read this plan?

4 A No, I couldn't tell you one way or the other,  
5 other than I know everytime I assume Governor Hunt is not  
6 aware of a certain item I find out he is probably more expert  
7 in that field than I ever gave him credit for.

8 Q Have you ever briefed him on this plan?

9 A Have I personally briefed him?

10 Q Yes.

11 A No, I haven't.

12 Q And are you aware of any other specific training,  
13 indoctrination, instruction, briefing, whatever term, that  
14 Governor Hunt has had with regard to this plan?

15 A This plan specifically?

16 Q Yes.

17 A I think we referred earlier -- I said that general  
18 policies and positions that the state has taken all the way  
19 through.

20 Q Right. Beyond that. This plan.

21 A I can only say that I personally have not briefed  
22 him on it. That doesn't mean it has not been done by others.

23 Q You don't have any knowledge of it yourself?

24 A Not that I recall.

25 Well, let me back up on that, Mr. Guild. We did --

1 we have had a briefing for the Governor sometime ago in our  
2 Emergency Operations Center. It's not documented and I can't  
3 give you a list, and to be quite candid I don't recall if it  
4 was on Catawba or on McGuire, but it was on one of these  
5 later nuclear power plant plans.

6 Q And when was that, do you remember?

7 A Like I said, I cannot remember, I'm sorry. My  
8 memory is not as good as it once was.

9 Q Can you tell me anything about the content of the  
10 briefing that the Governor had?

11 A I can tell you that we had it in the Emergency  
12 Operations Center, and each state agency that had roles in  
13 the plan briefed the Governor, and he agreed with the general  
14 policy that we were going with at that time.

15 Q Are you aware of any specific briefing with respect  
16 to the Governor's personal involvement in taking action under  
17 that plan?

18 A Isn't that the same question you asked me earlier?

19 Q Well, I think you remembered something that is  
20 helpful, and that's what I'm trying to focus your attention on.

21 A No, I'm not aware of any.

22 Q All right, sir.

23 MR. GUILD: Mr. Pugh, I appreciate your attendance  
24 here today and your response to my questions. Mr. Chairman,  
25 that's all the questions I have for the gentleman. Others



1 may have some for you.

2 JUDGE MARGULIES: Mr. Riley?

3 MR. RILEY: No questions.

4 JUDGE MARGULIES: Staff?

5 MR. MC GURREN: Could we have just a second?

6 MR. WILSON: If you'd like, I could go ahead.

7 JUDGE MARGULIES: Go right ahead.

8 CROSS EXAMINATION

9 BY MR. WILSON:

10 Q Mr. Pugh, the North Carolina Plan that's been under  
11 discussion, has that been reviewed by you?

12 A Yes, it has.

13 Q And has it been approved?

14 A I can't address that, I'm sorry.

15 Q Has the plan been exercised?

16 A Yes, it has.

17 Q And did you observe that exercise? Did you take  
18 part?

19 A I'd like to say I participated in that exercise.

20 Q All right, sir. And during that time of that  
21 involvement, did you observe any confusion or lack of  
22 coordination regarding the responsibilities of the North  
23 Carolina personnel or their interface with South Carolina  
24 personnel?

25 A No, I didn't. Quite to the contrary. I think it was--

1 we were all remarkably pleased at how well two staffs blended  
2 together.

3 Q Are you a trained lawyer, or do you have legal  
4 background in particular?

5 A No.

6 Q So you're not trying to represent to this Board that  
7 you have any expert understanding or knowledge legally as to  
8 the legal authorities that underlie particular actions that  
9 may be authorized for emergency response purposes, do you?

10 A I am not, will not and could not.

11 Q So your rendition of the authorities that you're  
12 aware of is not necessarily comprehensive or exhaustive; is  
13 that correct?

14 A Absolutely not.

15 Q All right. Mr. Pugh, is there a difference in your  
16 mind or for your purposes in the Division of Public Safety  
17 between operational and legal authorities?

18 A Between North and South Carolina?

19 Q Between you, within North Carolina. In other words,  
20 for a state of emergency or some other action that may be  
21 necessary at any given time, do you necessarily have to,  
22 before you go out and mobilize your forces, have a piece of  
23 paper signed by another responsible official, or have a  
24 legislative enactment prior to your undertaking operational  
25 efforts?

1 A Absolutely not.

2 Q So there is a difference in your own mind as far  
3 as your response purposes go?

4 A That's correct.

5 MR. WILSON: I think that's all I have, Mr. Chairman,  
6 thank you.

7 JUDGE MARGULIES: Staff?

8 BY MR. JOHNSON:

9 Q Mr. Pugh, you mentioned that the Governor attended  
10 a briefing of the Emergency Operations Center. Do you  
11 recollect where that was? Where that took place?

12 A The Emergency Operations Center. In the context  
13 I use it, and I apologize. It may be different from what  
14 we used here. It was the State Emergency Management Office  
15 in Raleigh.

16 He also attended a briefing following the first  
17 Brunswick plan exercise. That was down in Southport,  
18 North Carolina at the State Emergency Response Team Head-  
19 quarters at the National Guard Facility at Wilmington Airport,  
20 but that's a different plan altogether.

21 Q The what airport?

22 A The Wilmington, North Carolina. New Hanover County.

23 Q It's my understanding that there are separate  
24 North Carolina emergency response plans for each of the plants  
25 in North Carolina; is that correct? In other words, you have

1 a North Carolina response plan in support of the Catawba  
2 Nuclear Station, May 1983, Revision 4, January 1984. Do you  
3 have a similar such plan for each of the nuclear plants in  
4 the state?

5 A That's correct.

6 Q Are they basically similar in concept?

7 A The concept is similar, yes.

8 MR. JOHNSON: That's all I have, sir.

9 JUDGE MARGULIES: Applicant?

10 MR. CARR: Yes, sir, just a few questions.

11 BY MR. CARR:

12 Q Mr. Pugh, I want to make sure that the record is  
13 clear. When we talk about evacuation, the fact that before an  
14 evacuation can be compelled by the Governor, in the sense that  
15 people can be forcibly removed from their homes, does not at  
16 all impinge upon the ability of your organization, your  
17 supporting organizations on the state level or local organiza-  
18 tions such as Mecklenburg County and Gaston County to order  
19 appropriate protective action before the Governor declares a  
20 disaster, does it?

21 A No, it doesn't.

22 Q And such protective actions would include evacuation  
23 if the relevant persons deemed it necessary?

24 A Yes, it would.

25 Q Now, with respect -- and I appreciate your dialogue

1 with Mr. Wilson, but basically, from an operational standpoint  
2 what you have done and what you testified to is the actual  
3 way that your organization, the state organizations, operate  
4 in the event of an emergency; is that correct?

5 A That's correct.

6 Q And what you have done, or what the state organiza-  
7 tions do, is under a broad statutory grant, prepare and carry  
8 out the actual operational plan; is that correct?

9 A That's correct.

10 Q Do you have a representative from the Attorney  
11 GEneral's office that represents you and advises you as to  
12 whether your actions under the relevant authorities are legal  
13 and proper?

14 A Yes, we do.

15 Q And have you been so advised by your representative  
16 that you comply with the relevant statutory authority?

17 A Yes, we have.

18 Q The Attorney GEneral hasn't charged you or anybody  
19 in your organization with a crime for the way you behave in an  
20 emergency, have they?

21 A No, sir, they haven't.

22 MR. GUILD: I'm sorry, Mr. Carr, I couldn't hear you.

23 BY MR. CARR:

24 Q I said that Attorney GEneral of the state of North  
25 Carolina has not charged Mr. Pugh or anyone in his

1 organization with a crime for the way they behave in an  
2 emergency, has he?

3 A No, he hasn't.

4 Q Now w'th respect to Contention 8, which is really  
5 the subject of your visit here, are you familiar basically  
6 with that contention, its language?

7 A Yes, I am.

8 Q And I'm going to paraphrase this, but as I understand  
9 it, the contention is that there is such a confusion -- or a  
10 confusing and ineffective array of consultative and delegative  
11 authority that basically, the two states and the counties plus  
12 the supporting organizations won't be able to function  
13 effectively in an emergency because they won't understand  
14 what's going on. Is that your basic understanding of the  
15 contention?

16 A Yes.

17 Q Let me just ask you, Mr. Pugh, do you understand  
18 what you're supposed to do in the event of a Catawba emergency?

19 A Yes, I do.

20 Q And do you understand how the various lines of  
21 authority work?

22 A Yes, I do.

23 Q And do you believe that the supporting organizations  
24 which support your organization in the event of an emergency  
25 understand what they are to do in a Catawba emergency?

1           A     Not only do I believe they do in a Catawba  
2 emergency, but I believe the recent tornado disasters brought  
3 that in full view to everybody; that they certainly know what  
4 they're doing and how to coordinate their activities.

5           Q     And that they understand how the lines of authority  
6 work as well?

7           A     That's correct.

8           Q     Now with respect to the local jurisdictions,  
9 Mecklenburg County and Gaston County and their supporting  
10 organizations, do you believe that they understand what they  
11 are to do in the event of a Catawba emergency?

12          A     Yes, I do.

13          Q     And how the lines of authority work there?

14          A     Yes, I do.

15          Q     Let me just show you with respect to the last line  
16 of questions from Mr. Guild with respect to NUREG-0654, which  
17 I believe you agreed was the relevant guidance for training  
18 of radiological response personnel, I am showing you Section O,  
19 page 75 and it's entitled, "Planning Standard."

20                 Now, under Evaluation Criteria it says, "Each  
21 organization shall assure the training of appropriate  
22 individuals." Is that correct?

23          A     That's correct.

24          Q     Turning to page 76, again, under Evaluation Criteria  
25 number 4, it says, "Each organization shall establish a

1 training program for instructing and qualifying personnel  
2 who will implement radiological emergency response plans,..."  
3 and there are categories of personnel, A through J. Now,  
4 A is "directors or coordinators of the response organizations."  
5 Now, is that you and people on your staff?

6 A That's correct.

7 Q Do you see anywhere in 0654 in that section regarding  
8 training where it mentions the Governor?

9 A No, I don't.

10 Q One final point. With respect to the North Carolina  
11 plan, you were referred to the part on page 99, its  
12 paragraph 4, as the basis for the training questions asked by  
13 Mr. Guild?

14 A Yes.

15 Q Would you please read the first sentence of that  
16 paragraph?

17 A "State and local governments will conduct radiation  
18 emergency response training for personnel scheduled to operate  
19 within the plume and ingestion exposure pathway EPZ's."

20 Q Now, is it contemplated that in the event of an  
21 emergency, the Governor will operate within the plume EPZ?

22 A No, it's not.

23 MR. CARR: I think that's it, Your HONor, if I  
24 could just have a second.

25 (Pause.)



1 BY MR. CARR:

2 Q I have one final point, Mr. Pugh. There was some  
3 discussion about the Governor's role in the tornado and the  
4 fact that he took an active and direct role which certainly  
5 no one would dispute as proper in his capacity.

6 In the event of an emergency, do you believe that  
7 the Governor would take a role in the emergency so as to  
8 interfere with the proper function of the plan or cause  
9 confusion?

10 A No, I believe the Governor would function basically  
11 as he did here, and as, -- if I may -- guidance from the  
12 National Governors' Association has been issued to most  
13 governors saying in the state of emergency or disaster that  
14 the best place for governors to be is there in the shelters  
15 with the people, consoling and letting himself be seen there,  
16 and let the operations part of it be handled by trained  
17 operational staff.

18 Q And you believe that's the way he would function?

19 A That's exactly the way he'd function.

20 MR. CARR: That's it, Your Honor. Thank you.

21 JUDGE MARGULIES: Anymore questions?

22 REDIRECT EXAMINATION

23 BY MR. GUILD:

24 Q Mr. Pugh, we hope that would be the case but, for  
25 example, in the Three Mile Island incident, did you understand

1 that Governor Thornberg, for example, took several people from  
2 the control room at the facility and had them away from their  
3 critical tasks in bringing the accident under control,  
4 briefing him on how to respond to a radiological emergency,  
5 getting firsthand information and briefing at the time of  
6 the incident? Were you aware of that?

7 MR. CARR: Your HOnor, I object on two grounds. The  
8 first is it's well beyond the scope of the cross that I just  
9 conducted of Mr. Pugh. It doesn't go to the questions that  
10 anyone else asked of Mr. Pugh. And secondly, I think the  
11 record is quite clear that the reason we're here today is  
12 because of documents generated after the Three Mile accident.  
13 So on both grounds, it's irrelevant. It shouldn't be permitted.

14 MR. GUILD: Mr. Chairman, I maintain that it's  
15 directly responsive to the last question that Mr. Carr asked.  
16 I think we all would trust and hope that the Governor would  
17 behave in an appropriate fashion. We trust and hope that the  
18 Governor, who very likely will become very personally involved  
19 in the event of a major accident at Catawba, would do so in a  
20 constructive way that would not impede emergency people, and  
21 I understand that to be the witness's testimony, his hope.

22 But the fact of the matter is, I submit that there  
23 is contrary evidence in actual experience with the only major  
24 emergency response for a nuclear incident that we know about,  
25 and that is that a governor, contrary I'm sure to the best

1 plans and hopes of emergency officials, behaved in a way that  
2 I submit was counterproductive and interfered with emergency  
3 response.

4           And I want to know whether Mr. Pugh, in light of his  
5 answers to Mr. Carr, was aware of that contrary experience.  
6 And then I'd like to ask him the question: either on the  
7 basis of that awareness now gained or already had, what is  
8 the reason why he's confident that it won't happen similarly  
9 here.

10           JUDGE MARGULIES: You may do so.

11           BY MR. GUILD:

12           Q     Were you aware generally of that experience, that  
13 unfortunate experience?

14           A     Not that specific event that you mentioned. I was  
15 aware that certainly there were some problems at Three Mile  
16 Island or we wouldn't be here today.

17           Q     Right. Now I think when I was asking you about the  
18 training obligations, I stated that there were parts in  
19 addition to the one that Mr. Carr read to you, that provide  
20 for training. And I just want to direct your attention to  
21 page 97, the same training provisions, Item E, Radiological  
22 Emergency Response Training, 1, "radiological emergency response  
23 training at federal, state and local levels will be provided  
24 to those individuals who may be called upon to assist in an  
25 emergency, including participants under mutual aid agreements."

1 Now that would include the Governor, wouldn't it?

2 MR. CARR: Again, Your Honor, I'll object. My  
3 question was carefully and specifically limited to the precise  
4 passage that Mr. Guild asked Mr. Pugh about during his  
5 cross examination. I object to this as being beyond the  
6 scope of my cross.

7 MR. GUILD: Mr. Chairman, Mr. Carr mischaracterized  
8 my question. He said, this is the part you referred to, and  
9 in fact what I said was that part among others states an  
10 obligation for training. That was the foundation for asking  
11 about training of the Governor.

12 I submit that an accurate reflection of the record  
13 should include this specific part that I just read in, "has  
14 no limitation on persons responding in the plume or ingestion  
15 exposure EPZ's." If we're going to draw a 50-mile line and  
16 presume that it stops short of Raleigh where the Governor  
17 might be.

18 But the point is that the plan calls for broad  
19 training obligations for all people who have obligations under  
20 the plan, and I submit that includes the Governor.

21 JUDGE MARGULIES: You may answer the question.

22 BY MR. GUILD:

23 Q Mr. Pugh, your plan so provides, doesn't it?

24 A I've really lost the context of the question.

25 Q Sure. 97 E(1), I read it for you, and that basically

1 talks about everybody who has a responsibility under the plan,  
2 doesn't it?

3 A Who would be called upon to assist in an emergency,  
4 including participants under emergency aid agreements, which  
5 I would contend that the Governor would not be included in  
6 that.

7 Q So your position is that the Governor somehow is  
8 not included in that?

9 A I don't see any direct reference to him.

10 Q No, but it's only one paragraph and it says,  
11 "state, local, federal... who may be called upon to assist."  
12 And your position is that the Governor is not included in that  
13 description?

14 A I cannot imagine the Governor being out doing  
15 radiological monitoring or decontamination.

16 Q No, he'll just be ordering an evacuation, he'll  
17 just be taking command and control of the entire operation.  
18 And your position is that doesn't fall within --

19 MR. CARR: Your Honor, I'll object. That last  
20 comment mischaracterizes totally the state of the record,  
21 which we have spent the last hour and 10 minutes developing.

22 MR. MC GURREN: Your Honor, the staff joins in the  
23 objection. We feel that that question is argumentative.

24 BY MR. GUILD:

25 Q The Governor has command and control responsibilities,

1 I submit, Mr. Pugh, and I'm asking you to accept that as a  
2 premise for my question. I submit that the record reflects  
3 that.

4 Be that as it may, the Governor, I submit you  
5 should assume, has command and control responsibilities.  
6 Question: Does that mean that the Governor should not be  
7 read as included among those who may be called upon to assist  
8 in a radiological emergency?

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2 A I cannot agree with you that the plan says the  
3 Governor has command and control responsibilities under this  
4 plan.

5 I think it very clearly says command and control  
6 responsibility, that responsibility carried out the emergency  
7 activities called for in this plan are delegated to the  
8 Department of Crime Control and Public Safety.

9 Q Mr. Pugh, I thought we took an hour to get to  
10 the point where you said it should be presumed that that is  
11 to be read as assuming that the Governor has overall  
12 command and control responsibility.

13 Didn't we get to that point?

14 A I believe we said the Governor had the overall  
15 responsibility, but the command and control function would,  
16 under this plan, rest with the Department of Crime Control  
17 and Public Safety.

18 Q Nonetheless, we can split hairs about this -- your  
19 point is you don't have to train the Governor. And I should  
20 read the plan to say that the Governor is not required to be  
21 briefed, trained, familiarized or to have read the plan,  
22 any of the above as you read this provision?

23 A Under that one little line?

24 Q Any of these provisions. Your training obligation  
25 under the plan, Mr. Pugh.

A I believe we mentioned the Governor had been

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1 briefed earlier on the basic policies and procedures contained  
2 not only in this document, but all our documents. And they  
3 were very similar.

4 Q Seven years ago?

5 A No, I said I couldn't recall the exact date.

6 Q I just wanted --

7 A The one exact date I did recall was the Brunswick.  
8 But I said there was another briefing. I cannot put a date  
9 and time to it, Mr. Guild. I am sorry.

10 Q I guess what I am trying to understand, was that  
11 just icing on the cake, so to speak?

12 Or, was he briefed because the plan requires him  
13 to be briefed and trained?

14 Do you follow me?

15 Does the plan require him to be briefed and trained,  
16 the Governor?

17 A He was briefed on the plan because he demanded to  
18 be briefed on the plan. And, regardless of what the plan  
19 said, he was going to know the content therein.

20 Q How about answering the question. I just really  
21 don't want to belabor this point, but does the plan require  
22 that the Governor be trained and/or briefed in his role and  
23 responsibilities under the plan?

24 A I don't see any requirement laid on the Governor  
25 within this plan.



mm3

1 Q Okay, thank you.

2 MR. GUILD: That's all I have. I appreciate  
3 your appearance, Mr. Pugh.

4 JUDGE MARGULIES: Mr. Riley?

5 MR. RILEY: Yes, please.

XXXX

6 BY MR. RILEY:

7 Q You indicated, Mr. Pugh, that you participated in  
8 the Catawba drill?

9 A That's correct.

10 Q Before the drill was put into practice, did you  
11 receive a document which would indicate what the elements  
12 in the drill were, including the scenarios?

13 A Did I receive it?

14 Q Yes, did you receive such a document? And further  
15 did you read it in whole or in part?

16 A The document was prepared by a separate element  
17 under my supervision.

18 Q Well, I am asking if you had personal knowledge  
19 of some or all of the content of the planning document for  
20 the Catawba drill?

21 A Since it was prepared under my supervision, yes  
22 I did.

23 Q Were you interviewed by the press before it?

24 MR. CARR: Your Honor, I am going to object at  
25 this point.

mm4

1 The questions that Mr. Wilson and I asked did  
2 not go in any way to planning documents or briefing documents,  
3 or whether the media was involved in the drill.

4 We asked specifically whether in the context of  
5 Contention 8, which speaks for itself, Mr. Pugh had noticed  
6 confusion or lack of coordination between and among the  
7 entities involved in the exercise.

8 So, first, it is beyond the scope of the  
9 examination by Mr. Wilson and myself. Second, I would submit  
10 that this particular subject is beyond the scope of the  
11 contention as well.

12 JUDGE MARGULIES: Where is your question leading,  
13 mr. Riley?

14 MR. RILEY: Judge Margulies, on the basis of the  
15 drill in which some of these events were anticipated through  
16 press coverage of what part, at least in the scenario, would  
17 be. We have a situation where people, one, knew it wasn't  
18 for real; and two, had some notion of where it was going.

19 And I say that to come to the conclusion that  
20 there would be no confusion in a real situation because  
21 there was no purported confusion in a drill, is highly  
22 mistaken. I am simply trying to establish that there was  
23 beforehand knowledge available to people who participated  
24 of the nature of the drill. Then I want to move on to the  
25 fact that a drill is not necessarily a proper surrogate for

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1 a real life-threatening event.

2 MR. CARR: Your Honor, excuse me if I may.

3 I asked the identical questions, or substantially  
4 identical questions of the panel on Contention 8 that was  
5 here two days ago.

6 Mr. Riley had no initial questions of Mr. Pugh,  
7 and I submit to you that the questions -- that if that subject  
8 was proper, it was proper when the panel was here to testify  
9 on Contention 8. Mr. Sanders answered substantially the  
10 same questions yesterday.

11 Now, for Mr. Riley first to waive his initial  
12 opportunity to cross Mr. Pugh, and then decide to come in at  
13 this point is woefully out of time.

14 MR. GUILD: Mr. Chairman, Mr. Guild opened the  
15 door himself now. If he asked the witness to express an  
16 opinion about the drill as reflecting the lack of merit in  
17 Contention 8, he opened the door and now he cannot in  
18 fairness say that Mr. Riley cannot pass through it, sir.

19 (Board conferring)

20 JUDGE MARGULIES: You may ask the question,  
21 Mr. Riley, but time is running.

22 Why don't you bring it up to the ultimate  
23 question in terms of whether the drill is considered  
24 realistic and can indicate what would happen in a real  
25 emergency.

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1 MR. RILEY: I would simply like to establish that  
2 there was preinformation with respect to the nature of the  
3 drill.

4 BY MR. RILEY:

5 Q Mr. Pugh, do I correctly describe the fact that  
6 there was press anticipation of some of the scenario in  
7 the drill?

8 A Press anticipation?

9 Q Yes. There was an article in the press which  
10 indicated in part what the nature would be as a result of an  
11 interview with you?

12 A In general terms that is correct, Mr. Riley.

13 Q All right.

14 The performance of individuals under stress, in  
15 your opinion is invariable predictable on the basis of  
16 their performance under no stress?

17 Let me put it this way: Do you believe that one  
18 can predict that based on a drill in which there is; one,  
19 the knowledge that it is not for real; two, some notion of  
20 where it is going, and that one can correctly predict what  
21 the level of confusion will or won't be in a real situation  
22 which is life-threatening, and for which there is no  
23 anticipation.

24 A I contend that those individuals that had to  
25 react in this drill did not have the prior knowledge that you

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1 contend they do. First of all, yes, I had previous knowledge  
2 of a planning document for the exercise. As the supervisor  
3 for that staff, I had to have that knowledge.

4 That document was held in limited access as all  
5 of our exercise documents are.

6 Secondly, the press -- and you are correct in  
7 saying that a brief overview of the exercise was given in  
8 the Charlotte paper. However, the State staff that was  
9 asked to respond to that emergency, for the most part were  
10 in Raleigh at the time and did not have access to that  
11 document until probably that close of business the first  
12 day. So they were not as aware based on the paper publishing  
13 something that I asked them not to publish, than you think,  
14 maybe, Mr. Riley.

15 Q With respect to anticipation, is it not true that  
16 the monitoring vehicle of the Department of Radiological  
17 Safety was in Charlotte at least a week before the drill?

18 A I cannot respond to that.

19 Q In an actual situation, there will certainly be  
20 people, members of the public involved. It has been estab-  
21 lished that there were a very few people involved in the drill.

22 Do you not anticipate the interactions between  
23 these people and the officials are going to affect the  
24 level of confusion?

25 A I would say so.

mm8

1 Q Was the Governor involved in the Catawba exercise?

2 A Pardon?

3 Q Was the Governor involved in the Catawba exercise?

4 A Directly, no.

5 MR. RILEY: Thank you.

6 JUDGE MARGULIES: Thank you for coming here today,

7 Mr. Pugh. You are excused.

8 (Witness excused)

9 JUDGE MARGULIES: We will take a 15-minute recess.

10 (Recess)

11 JUDGE MARGULIES: Back on the record.

12 I have received a telephone call from Mr. Clements --  
13 he works in the Office of the Secretary for the Commission --  
14 and he told me that he attempted to contact the Parties last  
15 night at 5 o'clock and was unable to do so. And that he  
16 wished to announce that Commissioner Bernthal will, on  
17 Friday, between the hours of 10 a.m. and 1 p.m., visit the  
18 Catawba site. He asked me to announce that if members of  
19 the Party organizations wish to attend the site visit along  
20 with the Commissioner, they should call Steve Sohinki before  
21 the end of business today.

22 I was given a telephone number, and that is on  
23 the Federal telecommunications system which is 634-3323.  
24 Now what his number is on the commercial system, I cannot  
25 tell you.

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1 MR. CARR: Your Honor, he can be reached by calling  
2 the NRC operator and just asking for Mr. Sohinki. And I  
3 think that the main NRC number is (301) 492-7000. And, if  
4 you just ask for Mr. Sohinki they will connect you with him.

5 MR. GUILD: Mr. Chairman, is that for this Friday?

6 JUDGE MARGULIES: That is tomorrow.

7 The arrangements with Mr. Sohinki have to be made  
8 by the end of business today.

9 MR. GUILD: Just so that the record will reflect  
10 it, and we can have this on the table as soon as possible, it  
11 would be our desire to have representatives in attendance  
12 at that site visit. And I would anticipate that those  
13 representatives would be among the Parties who have been  
14 present and participating in the hearing. And, for that  
15 reason it might be advisable to plan tomorrow's hearing  
16 schedule, if there is a schedule for tomorrow, or a need for  
17 a schedule for tomorrow, to avoid those hours, Mr. Chairman.

18 JUDGE MARGULIES: Are you saying that you may  
19 conclude today?

20 MR. GUILD: I am very hopeful that we can finish  
21 witnesses today.

22 We have no witnesses scheduled for tomorrow, per  
23 se, on the assumption that if we can finish them today, we  
24 will finish them. And tomorrow is more or less, sort of  
25 reserved for witnesses we have not reached today. But, all

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1 are asked to appear today, Judge, and it is our desire to  
2 attempt to complete today.

3 I know we are running rather a little bit slow  
4 this morning, but it is still our hope that we can do that.

5 MR. RILEY: Judge Margulies, Mr. McGarry several  
6 days ago brought up the matter of our late-filed Contention  
7 No. 20, which I believe you will also want to have addressed  
8 before we conclude.

9 JUDGE MARGULIES: That is correct.

10 (Board conferring)

11 JUDGE MARGULIES: If we can't finish by this  
12 evening, is there any reason that members of the organizations  
13 of the Intervenors cannot attend without counsel?

14 MR. GUILD: Yes, Mr. Chairman, there is.

15 We have taken the view that if a member of the  
16 Commission who is a decisionmaker is present at the facility --  
17 typically in the past I have been at least on two site  
18 visits with the Commissioners, they get a briefing from  
19 Applicants. And it is our view that the Parties have the  
20 right to be represented by counsel at such a site meeting,  
21 site visit. And I would seek to represent at least my  
22 client at such a site visit where the decisionmakers are  
23 going to be present.

24 We anticipate, as in the case of Commissioner  
25 Gilinsky, the Commissioner would receive a briefing from



mm11 1 senior management of the Applicants with respect to their  
2 testing, their plans for operations, problems with construction  
3 as well as a view of the plant. And we believe those sessions  
4 are material in forming the basis for ultimate decision in  
5 the proceeding, and that the Parties have a right to have  
6 counsel present.

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1 MR. MCGARRY: Your Honor, applicants would propose  
2 we just move forward and see where we are. We may not have to  
3 reach this question and we can address it later on this  
4 afternoon.

5 MR. GUILD: In any event, Mr. Chairman, I certainly  
6 anticipate that even if we took time out for that site visit  
7 that we would conclude by the end of the day tomorrow. I  
8 don't expect that that presents any impediment to completing  
9 the proceeding with the existing witnesses as previously  
10 planned. I don't, really.

11 JUDGE MARGULIES: Let's go on and see where we arrive  
12 at later in the day.

13 MR. GUILD: That would be fine. May I proceed then?

14 JUDGE MARGULIES: Yes.

15 MR. GUILD: Would Mr. Marvin Chernoff come forward,  
16 please?

17 Whereupon

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18 MARVIN CHERNOFF,  
19 was called as a rebuttal witness and having been first duly  
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GUILD:

23 Q Mr. Chernoff, will you state your full name and  
24 your business position for the record, please sir?

25 A My name is Marvin Chernoff, C-H-E-R-N-O-F-F.

1 I am President of Chernoff Silver Associates in  
2 Columbia.

3 Q Do you appear in response to a subpoena for your  
4 testimony here today?

5 A Yes, I do.

6 Q Can you describe what has been your involvement with  
7 the applicant, Duke Power Company, with respect to your firm's  
8 activities?

9 A The applicant commissioned us to conduct a poll  
10 for them among the people who live within a 10-mile radius  
11 of the Catawba plant. We conducted a poll in February of 1984,  
12 a public opinion survey, and in September of 1983.

13 Q Have you conducted any other surveys for Duke Power  
14 Company?

15 A Yes, I have.

16 Q Could you describe those, please?

17 A We conducted for them for the past two years, I  
18 believe, bi-monthly tracking surveys of attitudes. We have  
19 also conducted surveys around nuclear plants in early 1983 and  
20 late 1982.

21 Q For Duke?

22 A For Duke Power, that is right.

23 Q That is at their Maquire and Oconee facilities?

24 A That was at Maquire, Oconee and Catawba.

25 Q In 1982?

1           A     Late 1982, I believe. I could be wrong, but I  
2 think it is late 1982 and early 1983.

3           Q     For Catawba?

4           A     Yes, sir.

5           Q     So for Catawba there would surveys in late 1982/early  
6 1983, in September of 1983 and then in February of 1984?

7           A     Yes.

8           Q     Let me be more specific. You conducted a survey  
9 at Catawba in late 1982 or early 1983?

10          A     I believe that is right.

11          Q     One in September of 1983?

12          A     Yes, sir.

13          Q     And one in February of 1984?

14          A     That's right.

15          Q     Is it fair to say that your firm is experienced  
16 in the design and conduct of such surveys?

17          A     Yes, it is.

18          Q     What generally does your firm do?

19          A     We are an advertising and public relations firm.  
20 Let me state that the mechanics of conducting the poll is  
21 generally subcontracted to another firm.

22          Q     All right. In the instances of the Catawba surveys,  
23 who did you subcontract with for the conduct of the surveys?

24          A     With Metro Mark Research in Columbia.

25          Q     Is Metro Mark experienced in the conduct of surveys?

1 A Very.

2 Q Have you used Metro Mark for the three surveys  
3 that you conducted at Catawba?

4 A Yes, we have.

5 Q Mr. Chernoff, what was the purpose of the conduct  
6 of such surveys?

7 A Duke Power commissioned us to find out the level of  
8 knowledge in the emergency planning and other information which  
9 may have been given to the residents of those areas.

10 They also commissioned us to find out the residents'  
11 attitudes towards that information.

12 Q All right. Would you describe how you designed the  
13 surveys to accomplish that purpose, please?

14 A The survey questionnaire was designed by us with  
15 Metro Mark in concert. We generally met with the client to  
16 go over the questionnaire and see if there was any input from  
17 them. The questionnaire was then tested in the field to see  
18 if there were any key words or phrases that were not  
19 appropriate or if there was any confusion in the questions  
20 and then we conducted the survey.

21 Q All right. The opinion survey was conducted by  
22 the administration of a telephone questionnaire?

23 A That is right.

24 Q Mr. Chernoff, in your opinion are the surveys you  
25 conducted reliable measures of the responses that were

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1 elicited to the questions asked?

2 MR. CARR: Your Honor, I am going to object at this  
3 point to the line of questioning with respect to the survey  
4 on a number of grounds. The first is that as Your Honor made  
5 very clear when we started yesterday morning, the purpose of  
6 these subpoenaed witnesses is to provide rebuttal testimony  
7 which is testimony to rebut facts already in the record.

8 This survey and testimony with respect to this  
9 survey is not in this record. It was sought to be introduced  
10 into the record and we objected to it on the grounds of  
11 irrelevancy and the Board refused to admit it into evidence.  
12 I have reference here to transcript pages 484 through 492 of  
13 Wednesday, May 2, 1984.

14 With respect to the particular subject matter, as we  
15 made clear our position is on contention one which we all  
16 recognized is focussed on the brochure, and that recognition  
17 is emphasized in the transcript pages I cited. We stand on  
18 the brochure and its compliance with Commission regulations.  
19 We do not rely on this survey in our case on contention one.

20 So on those grounds, first that it is beyond the  
21 scope of rebuttal evidence and second, that is irrelevant  
22 to the subject matter of contention one, I object to this  
23 line of questioning.

24 JUDGE MARGULIES: May I see the transcript reference?

25 MR. CARR: Yes, sir.

1 (Requested document proffered to Board.)

2 MR. GUILD: At some point if it is material may I  
3 also examine that transcript. I don't have available a copy.

4 JUDGE MARGULIES: Yes.

5 (Board conferring.)

6 JUDGE MARGULIES: Do you want to look at this, Mr.  
7 Guild?

8 MR. GUILD: Yes, Your Honor. Perhaps Mr. Chairman  
9 if I could be heard, I don't need to read the whole transcript,  
10 I would just like to have reference to it if I could if  
11 it is material to your decision on the objection but if I  
12 could be heard on the objection now.

13 JUDGE MARGULIES: That will be material to our  
14 decision so I do suggest that you read it.

15 MR. GUILD: All right, sir.

16 (Counsel reviewing transcript.)

17 MR. GUILD: May I be heard?

18 JUDGE MARGULIES: Certainly.

19 MR. GUILD: Your Honor, indeed when previously  
20 offered the survey results were received only for identification  
21 and were objected to by applicant on grounds of relevancy. The  
22 Chair did not make a ruling as to the relevance point but  
23 appears to have rested its decision on the documents more  
24 appropriately being offered by intervenors as part of our  
25 case. I am directing the attention of the Chair to transcript

1 page 492. We will deny its admissibility into evidence and  
2 we will permit you to make an offer of proof and you can  
3 make a request to make it part of your own case.

4 Mr. Chernoff has been called as a witness in support  
5 of our case. Initially we identified Mr. Chernoff as a  
6 witness in support of our case-in-chief. That was our  
7 judgment and our view as to the character of the subpoenaed  
8 witnesses.

9 The Chair has characterized them as rebuttal  
10 witnesses. The distinction is not material for deciding the  
11 objection. As a rebuttal witness the evidence that we would  
12 seek from Mr. Chernoff goes to rebutting applicant's evidence  
13 which is that those persons in the plume exposure pathway  
14 EPZ have been sufficiently educated and informed as to how  
15 they will be notified of an accident or an emergency and  
16 what their initial action should be such that they can and  
17 will take effective protective action.

18 We seek to rebut that evidence. We rebut that  
19 evidence through Mr. Chernoff through the results of the  
20 survey which he has conducted which we submit supports our  
21 view that applicants have failed in that obligation and  
22 that we should prevail under contentions one and seven.

23 Most particularly the survey seeks information as  
24 to how many persons have received the brochure, that brochure  
25 which even applicants would seek to have us focus on as their



1 case in support of contention one.

2 The offer of proof we maintain includes specific  
3 questions including question 21, during the past year have  
4 you received any brochures or pamphlets to tell you about the  
5 steps to take in the event of an emergency at the plant. The  
6 answer reflects that some 25.7 percent of the respondents  
7 in February 1984 said "no" to that question.

8 Similarly there are questions about how easy was it  
9 for you to understand this information and others. That is  
10 the point as to the scope objection, Mr. Chairman. We believe  
11 clearly that the Chair's initial ruling anticipated that the  
12 survey of which Mr. Chernoff has knowledge and to which we  
13 have addressed his questions was anticipated by the Chair to  
14 be properly the subject of our case, and that was the basis  
15 for the ruling excluding the survey results when initially  
16 offered.

17 We would submit that the witness if allowed to  
18 respond to the following line of questions with respect to  
19 the surveys that he did conduct, are these the results, do  
20 these reflect the results, show the witness exhibits  
21 for identification nine and ten which are the survey results  
22 for 1984, for number nine, September 1983 and for number ten,  
23 the witness would be able to identify those as the product of  
24 his survey.

25 As to the second point and that is the relevance

1 issue, it is clear to us that the only empirical evidence  
2 available to this Board of the effectiveness of the public  
3 education and information program that has been conducted  
4 by applicants and by that I mean beyond the expert testimony  
5 offered by applicants and intervenotrs as to their opinion  
6 about the content of the program, empirical evidence as to  
7 its effect on those who receive that information is through  
8 results of a scientific survey such as was conducted by the  
9 witness.

10 That is acknowledged by the Federal Emergency  
11 Management Agency in their guidance document FEMA-43,  
12 Standard Guide for the Evaulation of Alert and Notification  
13 Systems for Nuclear Power Plants which explicitly places  
14 reliance upon the results of scientific public opinion  
15 surveys as establishing the effec'iveness of such alert  
16 and notification systems.

17 As the Chair will recall Intervenors ourselves  
18 sought to introduce such evidence through the survey and  
19 testimony of Mr. Rutledge with respect to the effectiveness  
20 of Duke's program at its Maguire facility and such evidence  
21 was excluded on the grounds that it was not relevant to  
22 Catawba but that we submit there was no ruling suggesting  
23 that opinion survey evidence was not itself relevant  
24 particularly where we are now talking about survey evidence  
25 respecting Catawba itself.

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1           So, Mr. Chairman, in sum it seems inescapable to me  
2 that we were charged with presenting the survey evidence  
3 through the vehicle that is now before us and that is  
4 the subpoenaed testimony of Mr. Chernoff who performed the  
5 survey in question, that the survey results are clearly  
6 relevant. FEMA, the Federal Emergency Management Agency,  
7 so acknowledges and we believe that if received, they support  
8 our contention and that is that Duke's public information  
9 program has failed in its regulatory requirement for effective  
10 public education and information.

11           We would ask that the objection be overruled and that  
12 we be permitted to complete not only the pending question  
13 but this line of questioning.

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1 JUDGE MARGULIES: Mr. Carr?

2 MR. CARR: Yes, Your Honor, just a couple of quick  
3 points. First, I simply cannot let pass Mr. Guild's sweeping  
4 bypass or passing by of the highly significant and material  
5 distinction between rebuttal and direct evidence, and the  
6 Chair recognized that right at the outset yesterday and said,  
7 "We consider rebuttal evidence to be that evidence that will  
8 be given to explain, repel or disprove facts given in evidence  
9 by the adverse parties." That's the first point.

10 The second is, with respect to the relevancy point,  
11 our position is that the brochure meets the applicable NRC  
12 and FEMA regulations and regulatory guidance. The brochure  
13 was mailed to each person within the EPZ, and more importantly,  
14 FEMA did not rely -- Duke does not rely on this public  
15 relations survey in making its case; FEMA did not rely on  
16 this public relations survey, nor did the NRC, in reviewing  
17 and approving the plans.

18 If FEMA had made a survey of the nature mentioned in  
19 the regulations, then that survey might have been the proper  
20 subject of inquiry in this proceeding of FEMA witnesses, but  
21 they didn't need that survey to make their findings.

22 And I would point out that the FEMA survey is  
23 limited. It goes to such things as sirens. So with the two  
24 points there, I would urge that the motion be granted, and  
25 that this line of questioning not be permitted to be pursued.

1 MR. GUILD: Mr. Chairman, it seems apparent to me  
2 that you can't avoid -- no matter how narrow your blunders  
3 are, speaking of Applicants' focusing only on their brochure --  
4 the fact that if brochure publishes a brochure and doesn't  
5 give it to everybody. They can't meet the regulatory require-  
6 ments. That is with the most narrow view as to the scope  
7 of proof that's required of them on this contention. And  
8 we submit that the survey supports the position through  
9 empirical evidence that over 25 percent of the persons  
10 responding say they did not get the brochure.

11 Now, that's the most narrow possible view. We  
12 submit that just because Duke doesn't want to rely on  
13 Mr. Chernoff's surveys does not circumscribe the availability  
14 of those surveys as proof by way of rebuttal. Obviously,  
15 they didn't rely on those surveys because they don't support  
16 Applicants' case.

17 They were obtained through discovery. They are  
18 information with respect to counteracting Applicants' claims  
19 of the adequacy of their program. They were volunteered by  
20 way of their own witnesses, and that is apparent, and that's  
21 for good reason because they support our case.

22 But that doesn't make it evidence that's not  
23 cognizable by a tribunal that wants to understand whether  
24 or not there is an effective program here to inform people  
25 about an emergency. We submit that it's absolutely clear

1 that this is proper rebuttal evidence, that it's very relevant  
2 and critical to this contention, and ignoring it just simply  
3 suggests that all Duke has to do is pretend that it's  
4 informing people, publish a brochure, stick it in the back  
5 room and we'll give them the regulatory stamp of approval.  
6 I don't think that's the proper view, and I submit that the  
7 objection should be overruled.

8 MR. JOHNSON: I was not here during the discussions  
9 on May 2nd, but I would like to make the following observation.

10 It seems to me that Mr. Guild's point concerning  
11 the scope of rebuttal is well taken, to the extent that he  
12 shouldn't be limited by what it is the Applicants are relying  
13 upon, solely, if his rebuttal, in fact, does tend to negate  
14 the case that the Applicants are presenting. The fact that  
15 the Applicants didn't rely on the survey, it seem to me, is  
16 not so much a crucial point.

17 However, a review of the contentions themselves,  
18 Contention 1 and Contention 7, both of them together, does not  
19 reveal any attempt to challenge the distribution of the  
20 brochure, and it seems to me that rebuttal testimony  
21 concerning whether people got the brochure is irrelevant to  
22 the contention. And to the extent that the survey goes to  
23 those sorts of questions, they are not within the scope of  
24 the contentions. I don't think it's proper rebuttal or direct  
25 testimony.

1 MR. GUILD: Mr. Chairman, to that point, you can't  
2 get discovery until you have the contention admitted. The  
3 contention says the public information program is ineffective.  
4 It views the brochure on its face as ineffective.

5 We do discovery after the contention is admitted,  
6 and we discover that there is significant empirical evidence  
7 buttressing our claim, and that is to the effect that people  
8 didn't get the brochure and didn't understand what they got.

9 Now, there's no purpose in having discovery if  
10 your claim is limited only to the evidence that you knew  
11 about at the time the contention was framed.

12 We submit that to ignore evidence that supports our  
13 contention simply makes adjudication a meaningless process.  
14 Why have discovery, why have proof if you are circumscribed  
15 only to what you knew at the time you filed your contention?

16 (Board conferring.)

17 JUDGE MARGULIES: The Board will sustain the  
18 objection on the grounds that Mr. Chernoff's testimony is  
19 not the proper subject of rebuttal. We'll give you an  
20 opportunity to make an offer of proof, Mr. Guild, if you  
21 want to make an offer beyond that which you have already  
22 given. You may do so.

23 MR. GUILD: Mr. Chairman, we would ask that the  
24 Board make specific conclusions of law with respect to the  
25 scope of rebuttal on this subject because we believe the

1 Board is in error seriously and that the ruling is not  
2 sufficiently detailed to be able to allow the appeals board  
3 or a court on review to adequately understand the nature of  
4 the Chair's ruling.

5 We would ask for specific conclusions of law,  
6 please.

7 JUDGE MARGULIES: Mr. Carr set out our basis, or  
8 our understanding of rebuttal testimony; what is rebuttal  
9 testimony, and it's our opinion that it doesn't fall within  
10 that definition.

11 MR. GUILD: Mr. Chairman, if that's the detail that  
12 I can elicit in terms of conclusions of law, I appreciate  
13 that. But I would ask that the Chair make specific conclusions  
14 with respect to the elements of proof on this contention  
15 that's the basis for your ruling, because they were not  
16 contained in Mr. Carr's objection, nor have I heard any such  
17 contained in your ruling, sir. And I don't believe we can  
18 adequately bring this issue before an appellate body without  
19 such a specific conclusion, please.

20 JUDGE MARGULIES: We don't see that the evidence  
21 you seek to elicit will rebut anything in Applicants' direct  
22 case.

23 MR. RILEY: Judge Margulies, the object of putting  
24 on information on the material for people in the EPZ is so  
25 that they understand and know what to do in the event of an



1 accident. And certainly, a legitimate object of inquiry  
2 is the effectiveness of the brochure in obtaining this end.

3 Now, I would not think for a moment that the  
4 25 percent of the people who couldn't recall receiving the  
5 brochure did not necessarily physically receive it. It can  
6 also be interpreted that they saw it, took a glance, tossed it  
7 aside, forgot entirely about it, which would show that it was  
8 not an effective means of achieving the aims of the  
9 regulation in this matter.

10 So in the sense that Mr. Chernoff can throw some  
11 light on the effectiveness of the brochure in carrying out its  
12 intended task, I believe it does fall within the purview of  
13 rebuttal of the Applicants' positions on Contentions 1 and 7.

14 MR. GUILD: Mr. Chairman, let me ask this. We  
15 would ask that -- I have previously tried to preserve  
16 objections or exceptions to the Chair's characterization of  
17 the subpoenaed testimony as in the nature of rebuttal.

18 We sought Mr. Chernoff not by way of rebuttal,  
19 but as proof of our case-in-chief, and to the extent that  
20 I understand your ruling is dependent upon your view that  
21 he is a rebuttal witness, we would ask that Mr. Chernoff be  
22 received as a witness in support of our case-in-chief. And  
23 that is directly responsive to the Board's ruling at  
24 transcript page 492, which said that we could offer these  
25 exhibits in support of our own case. And we ask that

1 Mr. Chernoff be considered a witness in support of our own  
2 case -- if that is the basis for your ruling that his  
3 testimony is not admissible as rebuttal.

4 JUDGE MARGULIES: Mr. Carr?

5 MR. CARR: Just a quick point there, Your Honor.  
6 We have heard this argument before. Mr. Guild's quandry is  
7 one of his own making.

8 As he pointed out, he sought to subpoena Mr. Chernoff  
9 and 74 other people and didn't do it correctly. Those were  
10 denied, and he was then given another opportunity, and the  
11 Board ruled that yes, some subpoenas would be granted and  
12 that those people would come in and testify in rebuttal, and  
13 they've set out very clearly those grounds, the Board did.  
14 That's where we are now.

15 And I submit that we have reached the proper  
16 result, which is to move forward from here.

17 (Board conferring.)

18 JUDGE MARGULIES: We had previously ruled that the  
19 time for Applicant to make its direct case -- or rather,  
20 Intervenors to make its direct case -- had expired, and we  
21 are beyond that point.

22 MR. GUILD: Mr. Chairman, Mr. Chernoff was submitted  
23 as a witness to support this in April 16, 1984. You can't  
24 magically eliminate the fact that we identified him as that  
25 person on that date.

1 Further, it was only on the May date when the  
2 Intervenors were examining Applicants' direct witnesses that  
3 we understood specifically that their own witnesses could not  
4 identify the results of Mr. Chernoff's survey. That produced  
5 your ruling at transcript 492 that said then that we had to  
6 offer those exhibits identified as 9 and 10 in support of our  
7 own case.

8 So your ruling that said we should offer these  
9 exhibits in support of our own case came after your decision  
10 that somehow, our April 16th indication of Mr. Chernoff as  
11 a direct witness was ineffective because you didn't like our  
12 subpoena application.

13 You told us in May -- in May, Judge -- that we had  
14 to seek the survey's admission through our own witness, and  
15 that witness is before you now, at great inconvenience to  
16 himself I'm sure, and expense to this Intervenor to bring  
17 him here.

18 It's a legal trick, Judge, that you are relying on  
19 to keep this evidence out. You can't characterize it as  
20 anything else. We have jumped through every single hoop that  
21 you or others have put before us to bring this witness here  
22 to be able to testify as to the truth of the fact that  
23 25 percent of the people didn't even get the brochure, and  
24 you're going to ignore that.

25 We ask that Mr. Chernoff be characterized and

1 received as a witness in support of our case-in-chief, if  
2 that is required in order to bring this evidence to record.

3 JUDGE MARGULIES: It's my understanding of the  
4 record that Intervenor's direct case on Contentions 1 and 7  
5 went in on May 10th, eight days after my ruling on the survey  
6 document.

7 MR. GUILD: Then it was the Chairman's understanding  
8 that Mr. Chernoff's survey results should have been received  
9 through Messrs. Rutledge, Riley, Tweary, Sholly and  
10 Ms. Pittard and Andrews, Mr. Chairman?

11 JUDGE MARGULIES: That is your problem in terms of  
12 putting on your direct case as to how it should come in.

13 MR. GUILD: Then we would ask that Mr. Rutledge, who  
14 was in the hearing room and was our witness be allowed to  
15 resume the stand so that he may sponsor this exhibit.

16 Judge, this is simply a legal trick to avoid getting  
17 evidence in that is of obvious relevance, and we submit that  
18 it does a grave injustice to not only this party but to the  
19 public and to the record in this proceeding to rely on an  
20 error of technicality, which I believe to be absolutely  
21 without substantive merit, to avoid receiving evidence which  
22 demonstrates the absolute lack of merit of the Applicants'  
23 public information program.

24 How can you ignore a survey that the Applicants  
25 themselves conducted that shows that some one-quarter of the

1 people in the EPZ didn't even get the brochure, Judge?

2 JUDGE MARGULIES: You may make your offer of  
3 proof, counsel?

4 MR. GUILD: Are you rejecting my request that  
5 Mr. Rutledge be allowed to sponsor this document and be  
6 allowed to take the stand to do so?

7 JUDGE MARGULIES: Yes.

8 (Pause.)

9 BY MR. GUILD:

10 Q Mr. Chernoff, the question that was pending before  
11 you that I will ask by way of an offer of proof --

12 JUDGE MARGULIES: No, the offer of proof should  
13 come by way of you, in terms of what you expect him to  
14 testify to.

15 MR. GUILD: Mr. Chairman, the witness is here and  
16 sworn. May I not have the question answered so that the  
17 record will reflect his answer for purposes of an offer of  
18 proof?

19 JUDGE MARGULIES: No, it's your offer of proof,  
20 and you make the statement as to what you expect him to --

21 MR. GUILD: I submit that the answer to the question  
22 that was pending at the time of the objection would be that  
23 the witness would characterize the results of this survey  
24 as having generally accepted levels of reliability within  
25 the profession for a scientific survey of public opinion.

1 BY MR. GUILD:

2 Q Mr. Chernoff, I ask you, sir, if you can identify  
3 a document that has been previously marked for identification  
4 as Intervenors' Exhibit EP-9, and it's entitled, "Chernoff,  
5 Silver and Associates Community Issues Survey, February 1984."  
6 Can you identify that document? Is it of a number of pages?

7 A Yes, sir.

8 Q Is that part of the results of a survey you  
9 conducted?

10 A Yes, sir.

11 Q I show you a document marked for identification as  
12 Intervenor's EP-10, Community Issues Survey, September 1983,  
13 and is that similarly the results of a survey conducted by  
14 you or your organization?

15 A Yes, it is.

16 Q Of the Catawba EPZ?

17 A Yes, sir.

18 Q And do each of those surveys ask a question about  
19 whether people have received the emergency brochure?

20 A Yes, it does. They do.

21 MR. CARR: I object, Your HOnor. The documents  
22 will speak for themselves, and I assume we're at the point  
23 now where they have been identified, they are already in  
24 the record as an offer of proof, and we should cease this line  
25 of inquiry.

1 BY MR. GUILD:

2 Q Sir, I want to show you a letter that's dated  
3 March 29, 1984 from Mr. Shearin, counsel for Applicants, to  
4 myself and to Mr. Riley of the other Intervenor. And that  
5 letter says in the second paragraph, "We are enclosing a  
6 copy of the Community Issues Survey of February 1984 which  
7 you requested. In response to your questions about  
8 methodology of this survey and the 1983 survey, we are  
9 enclosing a one-page summary of the methodology."

10 Now I show you a document entitled, "Tracking  
11 Survey." Is it your understanding that this reflects the  
12 one-page summary of methodology that's referenced in  
13 Mr. Shearin's letter?

14 A I don't know whether I'm equipped to answer that  
15 question, Mr. Guild. What is the question again?

16 Q Is that a summary or description of the methodology  
17 employed in your surveys?

18 (Witness reviewing document.)

19 A Yes, sir.

20 MR. GUILD: Mr. Chairman, I only have this one copy  
21 of this document, but I'm going to ask that it be received  
22 into evidence, and I presume, pursuant to your ruling, that  
23 you will exclude it on the grounds that you have ruled out  
24 the others and then I will ask that it be received as an  
25 offer of proof. But I'd like it marked at this point, and

1 I will make copies and distribute them. Number 51.

2 JUDGE MARGULIES: It will be so identified.

3 (The document referred to was  
4 marked Intervenor's Exhibit  
5 EP-51 for identification.)

6 MR. GUILD: As an offer of proof, Mr. Chairman?

7 JUDGE MARGULIES: As an offer of proof of this  
8 witness.

9 MR. GUILD: Mr. Chairman, having had the witness  
10 authentic Intervenor's Emergency Planning Exhibits for  
11 identification 9, 10, and 51, I would move their receipt into  
12 evidence at this time.

13 MR. CARR: We would object, Your Honor.

14 JUDGE MARGULIES: I'm going to sustain the  
15 objection. If you wish them to be your offer of proof, they  
16 will be so considered.

17 MR. GUILD: They have already been received as an  
18 offer of proof, but by way of further proof through this  
19 witness, we would ask that they be so considered, Mr. Chairman.

20 JUDGE MARGULIES: They will be solely considered as  
21 an offer of proof.

22 (Intervenors' Exhibits EP-9, 10  
23 and 15 for identification were  
24 received as an offer of proof.)

25



1 BY MR. GUILD:

2 Q Mr. Chernoff, are you familiar with a document  
3 that's entitled, "FEMA-43." That's a designation, Standard  
4 Guide for the Evaluation of Alert and Notification Systems  
5 for Nuclear Power Plants."

6 A No, I'm not.

7 Q This document which has been noted in the record,  
8 I submit to you is the document which sets forth the Federal  
9 Emergency Management Agency's guidance for the effective  
10 design and installation of a system to properly alert and  
11 notify persons living in an EPZ, Emergency Planning Zone, in  
12 the event of an accident.

13 Do you understand that as part of regulatory  
14 requirements generally, Duke Power, for the Catawba facility,  
15 is obligated to provide a system that will effectively  
16 alert people in the event that there's an accident?

17 A Yes, I have.

18  
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1 MR. JOHNSON: Objection.

2 MR. CARR: Objection, your Honor.

3 MR. JOHNSON: It is beyond the scope of the  
4 subpoena request to Contentions 1 and 7.

5 MR. CARR: I join in Mr. Johnson's objection,  
6 your Honor. This goes to Contention 9, Mr. Chernoff's  
7 testimony. And subpoena request was sought with respect to  
8 Contentions 1 and 7. And on the face of that document was  
9 limited to the public survey which was just excluded from  
10 the proceeding.

11 MR. GUILD: Mr. Chairman, that is not the case.  
12 The witness' testimony was sought with respect to Contentions  
13 1 and 7. I submit that even the FEMA guidance on 1 and 7 --  
14 may I see what you are handing up, Mr. Carr?

15 MR. CARR: Yes. That is your subpoena request,  
16 Mr. Guild. That demonstrates what I just said is the case.

17 (Document handed to Board)

18 JUDGE MARGULIES: Let the record reflect the  
19 document was shown to Mr. Guild.

20 (Document handed to Counsel Guild)

21 MR. GUILD: I see that, Mr. Chairman.

22 The document states that Mr. Chernoff has  
23 conducted such a survey, and goes further and states:

24 "Intervenors seek to prove that Mr. Chernoff's  
25 testimony that the public information and education program

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1 has failed to effectively inform people how they will be  
2 notified of an accident and what initial response should be."

3 I seek to examine the witness on that subject,  
4 and that is the purpose of my questions.

5 MR. CARR: The subpoena request was limited to  
6 Contentions 1 and 7 on its face.

7 MR. GUILD: I am not going to ask him whether  
8 people hear the sirens, or he has done an acoustic study.  
9 Counsel really anticipates more than he is entitled to.

10 The question simply goes to whether or not --  
11 goes to laying a foundation concerning the appropriate  
12 regulatory guidance for judging the effectiveness of the  
13 public education program.

14 I think it is obvious Mr. Chernoff is not an  
15 acoustic engineer, but that is not --

16 JUDGE MARGULIES: I will let you proceed.

17 MR. GUILD: I am going to rephrase the question.

18 JUDGE MARGULIES: If counsel reaches a point that  
19 you feel is objectionable, then raise your objection at that  
20 time.

21 MR. CARR: Yes, sir.

22 JUDGE MARGULIES: As foundation and as a preliminary  
23 matter, he may proceed.

24 BY MR. GUILD:

25 Q I think the question, as I recall, was answered.

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1 Let me paraphrase. You are aware that they have an obligation  
2 to have an alert system?

3 A Yes, sir.

4 Q And are you aware that that alert system is  
5 designed to effectively inform the public so that they will  
6 take appropriate protective action upon instructions there-  
7 after?

8 A Yes, sir.

9 Q In the Catawba EPZ we have a system of fixed  
10 sirens principally. Are you aware generally that the fixed  
11 sirens are designed to alert people so that they will tune  
12 into their emergency broadcast system for more information?

13 A Yes, sir.

14 Q And, that emergency broadcast system is intended  
15 to communicate specific instructions, such as sheltering,  
16 staying indoors to avoid excessive -- to avoid radiation  
17 exposure, or evacuation to avoid radiation exposure, among  
18 other things.

19 A I'm only generally aware of it, not specifically.

20 Q Now, in the FEMA 43 guidance, the guidance to  
21 which I directed your attention earlier, at pages N4 and N5,  
22 the FEMA authors describe a telephone survey as a device  
23 for obtaining empirical evidence as to the effectiveness  
24 of the information system for effectively alerting and  
25 notifying members of the public as to how they will be

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1 alerted, and what their initial actions should be.

2 Now, among the questions that FEMA -- page N5  
3 states as follows:

4 "FEMA telephone survey of EPZ residences will  
5 consist of approximately six questions, and will be designed  
6 (subject to Office of Management and Budget Approval) to  
7 determine:"

8 Now, we have got a number of items that focus on  
9 the siren audibility. And I am not going to ask you about  
10 those because you are not an acoustical engineer. What I  
11 want to focus on is the last item and that reads as follows:

12 "If the residents had received an emergency  
13 instructional package regarding what to do in an actual  
14 emergency."

15 All right, sir. Now did you conduct a survey  
16 which sought to elicit that same information?

17 A May I see the question?

18 Q Sure. The last item on that list.

19 (Document handed to witness)

20 MR. CARR: Objection, your Honor, on the grounds  
21 of relevance.

22 To the extent that that particular document is  
23 relevant to the inquiry before us, the question should have  
24 been addressed to the FEMA witnesses who were here on  
25 Contention -- who were here on all contentions on May 9th.

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1 MR. GUILD: Mr. Chairman, the FEMA people, their  
2 own document states that a survey should be conducted to  
3 elicit that information.

4 The question pending seems to establish what should  
5 be apparent, and that is that this witness did a series of  
6 surveys that sought to obtain exactly that same information.  
7 I believe the record should so reflect, as relevant.

8 MR. CARR: Our point is we have already argued  
9 that matter and the Board has ruled on it. And the fact  
10 that FEMA may or may not have a requirement is irrelevant to  
11 what is here before us now.

12 Mr. Guild, if he wanted to pursue that, he could  
13 have pursued it with the FEMA witnesses.

14 MR. GUILD: No, sir. Mr. Chairman, point of fact:  
15 there is a case being presented by Applicants; there is a case  
16 being presented by the NRC Staff. Part of the NRC Staff's  
17 case is to present the Interim Findings of the Federal  
18 Emergency Management Agency, and they did so.

19 Now, we are entitled beyond question to rebut all  
20 adverse evidence. And the adverse evidence having failed,  
21 we believe improperly, to be permitted to address Applicants'  
22 case through this witness, the case I now seek to address is  
23 the case presented by the Federal Emergency Management Agency  
24 which in its Interim Findings concluded that subject to final  
25 action, which we presume will come long after this plant is

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1 licensed, long after this Board's decision, that they found  
2 the alert notification system effective. They proved it.  
3 And that is a paraphrase. That is the testimony. They  
4 found no reason not to.

5 Now, I seek to demonstrate by way of rebuttal of  
6 FEMA's case, FEMA's Interim Findings, that -- through this  
7 witness -- that that case should not be credited. And, to  
8 quote the Chair's observations about the proper scope of  
9 rebuttal that this will either explain, repel, counteract  
10 or disprove the case in chief of the Federal Emergency  
11 Management Agency.

12 JUDGE MARGULIES: My recollection of the FEMA  
13 testimony was that they never made that survey.

14 MR. GUILD: No, sir. But they said on the basis  
15 of the information that they knew, they had no reason not  
16 to approve the adequacy of the alert and notification system  
17 and they had no reason to believe that our Contentions 1 and  
18 7 were meritorious and they provided interim approval for  
19 Applicants' system and they presented testimony opposing our  
20 Contentions 1 and 7.

21 I can give you a specific reference if it would  
22 be helpful for your ruling, Judge. But I think the record  
23 will reflect that FEMA's testimony on each contention was  
24 that they found no evidence which would go to sustaining  
25 Intervenors' Contention. And, on the contrary, supported

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1 Applicants' case.

2 We believe that we are entitled to rebut the  
3 Federal Emergency Management Agency's case and Interim  
4 Findings.

5 MR. JOHNSON: The Staff will maintain it is not  
6 entitled to rebut Federal Emergency Management Agency's case  
7 on alert and notification through this witness because it is  
8 beyond the scope of the subpoenas.

9 We assert the same objection I made earlier.

10 JUDGE MARGULIES: We are going to sustain the  
11 objection on the grounds stated by Mr. Johnson.

12 MR. GUILD: If I may have a moment, Mr. Chairman,  
13 I believe you are in error, and I would like to make a point  
14 if I can, please.

15 (Pause)

16 Mr. Chairman, first the request for subpoenas of  
17 May 16, like the request of April 16, submits that  
18 Mr. Chernoff's testimony -- we believe that this supports our  
19 case in chief -- makes no reference to rebutting only the  
20 Applicants' testimony. It is generally identified as  
21 proving that the public information and education program has  
22 failed to effectively inform people about how they will be  
23 notified of an accident, and what initial response should be.

24 It is not limited as Mr. Johnson would have  
25 magically have it limited to only responding to Applicants'



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1 case.

2 We submit --

3 MR. JOHNSON: That mischaracterizes what I said.

4 MR. GUILD: We submit that it should be properly  
5 treated over our objection calling it rebuttal testimony in  
6 the first instance as responding to the claims of all  
7 parties who were adverse to that of Intervenors, including  
8 specifically the Federal Emergency Management Agency  
9 sponsored by the Staff.

10 In addition, we would point out that in the  
11 FEMA testimony itself, prefiled on Contentions 1 and 7,  
12 question 4 at page 4 states -- excuse me, question 7 at  
13 page 4:

14 "Is information made available to the public on  
15 a periodic basis on how they will be notified and what their  
16 initial actions should be?"

17 Answer: "Yes, via Catawba brochures."

18 And it goes on and follows to cite the parts of  
19 the plan which we have already discussed in cross examination  
20 as principally relying again on the brochures.

21 Further, question 22: "Have procedures for  
22 coordinated dissemination of information to the public  
23 been established? Explain."

24 Answer 22, page 7: "Yes. And these procedures  
25 are listed in the following plans." And it lists the plans.

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1           It is clear that the FEMA testimony is based  
2 explicitly on the effectiveness of the design of the  
3 brochure, which we are not seeking to examine this witness  
4 about, but on the effective dissemination of that brochure,  
5 and explicitly relies on people having gotten it and under-  
6 stood it and read it.

7           Now we submit that it is just inescapable that  
8 by whatever ruse, trick, device you want to exclude this  
9 evidence and have so far, you can't say we are not entitled  
10 to rebut the FEMA testimony that goes to the same point,  
11 absolutely the same point. They presume, and so state under  
12 oath their reliance on the dissemination of this brochure,  
13 and we submit that this witness, whether he voluntarily wants  
14 to do so or not, will present evidence that says that it  
15 wasn't disseminated.

16           JUDGE MARGULIES: Counsel, I think you ought to  
17 restate your question, because it presumes that this Board  
18 acts by ruse, trick or device, whatever term that you used.

19           MR. GUILD: I think that is the result, Judge.  
20 And I frankly think that is the point of the Applicants'  
21 objection. I don't mean to be pejorative about your ruling,  
22 Judge, but let's face it, we have got a piece of substantive  
23 evidence here. And, unless you are simply trying to throw  
24 up one more roadblock in the way of getting substantive  
25 evidence of obvious materiality in the record, it seems

mm10 1 absolutely clear to me that this is rebuttal to the FEMA  
2 testimony.

3 I point you to a specific piece of testimony that  
4 says we rely on the brochure being disseminated, and I now  
5 have before you what is inescapably evidence that it  
6 hasn't been disseminated. How can you ignore it, Judge?

7 JUDGE MARGULIES: The Board abides by its ruling.  
8 If you want to make an Offer of Proof, you may do so.

xxxxx 9 MR. GUILD: The pending question was whether or  
10 not the witness performed a survey that sought the information  
11 which is indicated in the FEMA 43 document, page N5, if the  
12 residents had received an emergency instructional package  
13 regarding what to do in an actual emergency.

14 I would submit by way of Offer of Proof, that the  
15 witness' answer would be in the affirmative to that  
16 question. He did do such a survey. The results of the survey  
17 are in the record by way of an offer of proof reflecting the  
18 answer to that question to the effect that over 25 percent of  
19 those responding in the more recent February '84 survey  
20 stated that they had not received the brochure.

21 BY MR. GUILD:

22 Q Now, Mr. Chernoff, the documents that have been  
23 received as an Offer of Proof that reflect your survey  
24 results, reflect the answers to questions. And there is a  
25 Q21 for example. Is that a way that you number your questions?

A That's right.

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1           Q     Now I have for the February 1984 survey, for  
2 example, which has been marked as number nine as an offer  
3 of proof, I have ten questions but the numbers appear to  
4 run as high as Q-30. Should I fairly conclude that there  
5 were at least 30 questions?

6           A     Yes.

7           MR. CARR: Your Honor, I am going to object. This  
8 document and this subject has been ruled out by this Board  
9 half an hour to 45 minutes ago. You allowed Mr. Guild to put  
10 it in as an offer of proof. It has been admitted as an offer  
11 of proof and he continues to try to treat the subject.

12           MR. GUILD: No, sir, if you will just give me a  
13 moment. I am trying the best I can under some very adverse  
14 conditions, Your Honor, to conduct an examination of a  
15 witness within the confines of your ruling. I simply asked  
16 him a foundation question. The substantive question is yet  
17 to come and I would ask that the Chair instruct Mr. Carr to  
18 hold us objection and at least let me get the question on the  
19 floor.

20           JUDGE MARGULIES: You have gone into a document  
21 that is already as a part of the record as an offer of proof  
22 and I would like to know what direction you are going in.

23           MR. GUILD: The direction I am going in, Your Honor,  
24 is you won't let me question as to the survey with respect  
25 to the issue of whether the brochure has been received or not.

11-2

1 I believe your prior rulings have been that it is  
2 open still absent that subject for intervenors to claim as we  
3 have that Duke's primary program has been a public relations  
4 program to persuade members of the EPZ public that there is  
5 no hazard in effect, to lull them into a false sense of  
6 security is the general language of the contention.

7 We tried to demonstrate through the evidence about  
8 the public relations program through the witnesses that Duke  
9 offered on cross-examination. We submit that the witness  
10 is knowledgeable with respect to that issue and I seek to  
11 elicit testimony with respect to that subject, that is,  
12 Duke's efforts to falsely reassure people as to the  
13 insignificance of the hazard represented by the facility.

14 That, we believe, is contrary to their obligation.  
15 This Board will have to weigh not only the limited piece of  
16 information that Applicants have disseminated in an ineffectual  
17 fashion as to how they are going to be notified and what  
18 actions to take, but you have weigh that in the context of what  
19 we maintain is not only the lulling information in the  
20 brochure but the efforts to falsely humanize the Catawba  
21 facility which we presented evidence to persuading people  
22 that there is no hazard.

23 The result of that, Your Honor, is to have people  
24 which we believe has been the case falsely presume that there  
25 is no significant hazard here and the result of that will be

11-3

1 their inadequate preparation to take response. They will  
2 not treat the subject seriously, Judge, and we maintain  
3 that when the sirens go off there will be inappropriate  
4 response. That substance has to be reached. You have to  
5 determine whether people have a sufficient base of education  
6 about the hazard so that you will find that they can and will  
7 implement the plan.

8 MR. CARR: Your Honor, Mr. Chernoff's sole contact  
9 with this matter is through the survey that was conducted  
10 under his supervision and control. That subject has been  
11 ruled out by the Board. Therefore, Mr. Chernoff's testimony  
12 can't be received on this matter that Mr. Guild just put  
13 forth.

14 MR. GUILD: That presumes answers that have not  
15 even been received, Mr. Chairman, from the witness. Mr. Carr  
16 is testifying about what the limits of the witness' knowledge  
17 are and I submit that that is just beyond the scope of what  
18 an argument should be.

19 I also point the Board to the fact that intervenor's  
20 emergency planning exhibit number "7" which is a Catawba  
21 Information Program Memo was initially excluded for exactly  
22 the same reason that you excluded, we understood to be the  
23 same reason for which you excluded the survey results.

24 We then called Ms. Cartwright to the stand who  
25 identified the memorandum, stood very limited cross on it,

1 really just identified it, we then moved its admission and  
2 it was objected to on relevance grounds and you overruled  
3 those objections and you received it. We believe it largely  
4 goes to the point I am trying to make now and that is not  
5 the receipt of the brochure but the overriding public relations  
6 program of the applicant which we believe produced the effect  
7 of an inadequate public information program.

8 JUDGE MARGULIES: You have laid no foundation to  
9 establish Mr. Chernoff as having any expertise in any area  
10 other than in conducting a survey.

11 MR. GUILD: I know. Let me do this. First the  
12 gentleman talks about Duke's design of the survey. They  
13 talk about applicant's input to his work. He sits down with  
14 them and they tell him what they want to know. I submit  
15 the answer to the question previously put suggests that  
16 there are questions which were posed beyond the ten that I  
17 have available to me. I submit that they fall under the  
18 category among other things as public relations information  
19 that applicant's sought to elicit.

20 He had discussions with applicant, I submit, and  
21 talked with them and on the basis of talking with them he has  
22 knowledge about their public relations program and yes, indeed  
23 he conducted a survey as part of his professional charge as  
24 part of that public relations program.

25 So there are at least two separate elements, one of

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1 which is the result of a professional survey work on the  
2 PR program of applicants and second is his personal knowledge  
3 as to Duke's motives, purpose, design and public relations  
4 program substance.

5 We would seek to examine him on both of those  
6 subjects. Mr. Chairman, I would submit this. The last page  
7 of Ms. Cartwright's memo that is in evidence says this,  
8 "The measurement of this program..." and that is their public  
9 relations program that we say lulls people into a false  
10 sense of security, "The measurement for this program has been  
11 opinion research in the emergency planning zone." I will  
12 skip the next sentence. "This information has not only  
13 confirmed the success of our Catawba information program but  
14 has allowed us to tailor these programs to the informational  
15 needs of our community."

16 I submit previously in the memo it suggests that  
17 informational program is not to inform people about how to  
18 respond in an accident. It is to obscure that information  
19 that there will be an accident or might be an accident among  
20 the general programs to accomplish the public's acceptance  
21 of this facility and falsely reassure people about the lack of  
22 hazard.

23 (Board conferring.)

24 JUDGE MARGULIES: Can you qualify the witness as  
25 having knowledge in those areas, counsellor?



1 MR. GUILD: I think he already has been qualified  
2 but I would be happy to do it some more. I think he stated  
3 that in his preliminary responses.

4 JUDGE MARGULIES: His preliminary responses were  
5 that he conducted a survey but not in terms of what you are  
6 seeking.

7 MR. GUILD: That is what I was seeking to do through  
8 the line of questions I just started.

9 BY MR. GUILD: (Resuming)

10 Q Mr. Chernoff, you operate a public relations firm,  
11 do you not?

12 A Public relations and advertising, yes.

13 Q Have you assisted Duke in their public relations  
14 efforts?

15 A In a very limited fashion over the last two years,  
16 sir.

17 Q As part of your survey design, you stated that you  
18 met with Duke Power Company and sought their contributions  
19 to your survey, correct?

20 A Correct.

21 Q What contributions did Duke make to your survey  
22 beyond the questions that are included in the documents that  
23 I have shown you, the ten questions that have been marked as  
24 an offer of proof?

25 MR. CARR: Your Honor, I object. This survey has been

1 excluded. Mr. Chernoff's connection with this proceeding is  
2 through the survey.

3 JUDGE MARGULIES: Let's get that through the witness.

4 BY MR. GUILD: (Resuming)

5 Q Could you answer that question please, Mr. Chernoff?

6 A (No response.)

7 Q As best as you can recall. I know you don't have  
8 the document in front of you, do you?

9 A I don't have the document.

10 Q Just give me the best of your recollection. We have  
11 ten questions before us. There are at least 30 of them. Do  
12 you know how many in total there were?

13 A No, I don't recall, probably around 40.

14 Q Can you give me a general description of the  
15 nature of the questions beyond the ten that we have before us?

16 A There are several that would determine demographics,  
17 sex, race, age and income. There were several that were  
18 screening questions at the beginning of the question mostly  
19 for the purpose of getting people used to asking questions like,  
20 "How do you feel about the world in general?" "How do you  
21 feel about your neighborhood?" There were some of the  
22 questions regarding their attitudes toward Duke Power and  
23 the kind of job it does in providing electricity, I believe,  
24 and I believe that the questions that you have in front of you  
25 were the only questions regarding the emergency preparation.

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1           Q     We have been excluded from talking about the  
2 questions about emergency preparation. Those are the ones  
3 before us. What I am interested in is questions beyond the  
4 area of emergency planning, questions in the nature of people's  
5 attitudes about nuclear power, people's attitudes about Duke  
6 as a nuclear operator, public relations information about the  
7 acceptance of the plant, for example. Were there questions of  
8 that sort?

9           A     Yes, there were.

10          Q     What was the nature of those questions?

11           MR. CARR: Your Honor, I will object. The question  
12 clearly stated that these matters that Mr. Guild is going into  
13 of course were included in the survey but they were questions  
14 beyond those related to emergency preparedness which not only  
15 is the subject of this contention but is the subject of the  
16 hearing. Therefore, those questions are irrelevant as well.

17           MR. GUILD: Mr. Chairman, we maintain and I don't  
18 want to reargue the thing over and over and over again, but we  
19 maintain that you excluded the questions that have to do with  
20 emergency preparedness brochure. I am trying to lay a  
21 foundation as you suggested for the witness' knowledge about  
22 Duke's efforts to design a public relations program with the  
23 object that I posited and that is to falsely reassure people  
24 about the hazard and to therefore defeat the purpose of the  
25 commission's requirements to inform people so that they will

1 respond appropriately. That is what I am trying to do.

2 We have established first now that there are  
3 questions beyond those ten. Some of them were background  
4 questions but some of them are of a public relations nature  
5 as to people's attitudes about nuclear power. That is as far  
6 as we have gotten. I want to pursue that because we have  
7 now established that in fact the survey included questions,  
8 Mr. Chernoff was asked to find out information by Duke  
9 concerning the effectiveness as Ms. Cartwright describes  
10 of their public acceptance efforts.

11 JUDGE MARGULIES: You may continue.

12 BY MR. GUILD: (Resuming)

13 Q For example, Mr. Chernoff, your February 1984  
14 questions compare the results of that survey to previously  
15 elicited responses for comparative purposes. Now that  
16 suggests that there were other responses. I don't have those.  
17 But the headings say, for example, "Utility Bills." That is  
18 a heading, "More Plants," and let me show you the document.  
19 These are obviously short titles that involve longer  
20 questions.

21 A (Perusing document.)

22 Q Do you see what I am talking about now?

23 A Yes, sir.

24 Q These reflect correlations of responses to the  
25 question that is reflected in the actual questions set forth at

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1 the top of the page with previous responses by the same  
2 respondent, correct?

3 A That is correct, previous or subsequent.

4 Q Or subsequent, all right. For example, what is the  
5 "Less Radiation," "RADIAT," can you tell me generally what  
6 that question was about?

7 A As I recall the question was, "Do nuclear plants in  
8 your opinion emit more or less radiation than other items in  
9 the atmosphere?"

10 Q All right. Can you recall the responses to the  
11 questions?

12 A It was about split, I think, as best as I recall.

13 Q All right. Now there is a column next to that  
14 that says, "Concerns/MAT," Can you tell me what that would  
15 represent?

16 MR. CARR: Your Honor, I object. Mr. Guild is  
17 cross-examining from the very document that you have  
18 excluded from the proceeding.

19 MR. GUILD: We don't have another magic wand, Mr.  
20 Chairman, that says that I can't look at a document and use  
21 it as a basis for cross-examination even though that document  
22 itself has been excluded.

23 MR. CARR: How about the subject matter?

24 MR. GUILD: It is your PR problem, sir, that  
25 falsely reassures people as to the nature of the hazard and

1 the witness has just testified that you asked a question  
2 to people about their attitudes of radiation. That is  
3 material.

4 MR. CARR: This goes to the very heart of the  
5 objection that I made well over an hour ago and that the Board  
6 has ruled on. This subject is irrelevant to the subject of  
7 the contention and the proceeding. We do not rely on it.  
8 We argued that at some length and the Board ruled. Mr. Guild  
9 continues to come back and back and back ignoring the Board's  
10 ruling.

11 MR. GUILD: No, sir.

12 (Board conferring.)

13 JUDGE MARGULIES: It is my recollection of the  
14 record that Ms. Cartwright testified to the effectiveness of  
15 Duke's public relations program. I take it this is rebuttal  
16 in regard to that?

17 MR. GUILD: That is what her memo reflects, Mr.  
18 Chairman, as the effectiveness of the public relations  
19 program.

20 JUDGE MARGULIES: Is this what your examination is  
21 directed to?

22 MR. GUILD: It is to the point that that public  
23 relations program impuned the effectiveness of the  
24 commission's requirement for effectively notifying and  
25 informing people about emergency response. If I may continue.

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BY MR. GUILD: (Resuming)

Q I was asking you, sir, about the column or the question that apparently was posed reflecting the title, "Concern/MAT." Can you tell me about that, sir, please?

A I don't remember the exact question but it was concerning radiation material and the concern about that.

Q Can you tell me what the results of that survey question were?

A I remember what the results were, 10 or 15 points more positive than the general population around the nuclear plant and I recall also that it probably ran around eight to one saying that they were not concerned.

Q When you say "more positive," you mean less concerned.

A Less concerned.

Q Closer to the plant?

A The people living in the emergency area were less concerned than people in the general population who we surveyed.

Q About the nature of the radiation hazard?

A That's correct, generally.

Q Now there is a "More plants." What is that about?

A (Perusing document.) There was a question about whether they would recommend the construction of more plants and as you can see the answer was positive two to one.

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1 Q Is that nuclear plants?

2 A Yes, sir.

3 Q These were EPZ residents?

4 A EPZ residents and again much higher than the  
5 population as a whole.

6 Q People living closer to a nuclear plant, much higher  
7 than as a whole recommending more nuclear plants in short?

8 A Yes.

9 Q Did you coorelate those response with time in the  
10 sense of what were people's reactions after having received  
11 the brochure and the public information program from  
12 applicants among other public relations work from applicants?

13 A Yes, sir.

14 Q CAn you tell me generally how the applicant's public  
15 relations efforts affected the results of those questions  
16 generally?

17 A We took a survey in September of 1983 as I  
18 previously testified and February of 1984. The results  
19 increased slightly but not dramatically on those questions.

20 Q In the sense of less people concerned? Fewer  
21 concerns?

22 A It was almost the same in both cases as best as I  
23 can recall.

24 Q Was there any significant impact in your judgment  
25 then from the distribution of the brochure?



1           A     Not on these particular questions but you are not  
2 asking me about the questions about emergency procedure.

3           Q     I am not allowed to. I would like to, Mr. Chernoff,  
4 but I am not allowed to.

5                     Have you met Ms. Cartwright?

6           A     Yes.

7           Q     Have you ever seen this memo? It is called, "Catawba  
8 Information Programs." It has been received in evidence.

9           A     (Perusing document.) No, sir.

10          Q     It says, "Due to a number of unique circumstances  
11 we began our public acceptance efforts a number of years ago.  
12 We new that the operating license would be contested. We  
13 also had special responsibility at Catawba because we had  
14 sold portions of the plant." Skipping, "... Programs at  
15 Catwaba encompassed both media and community efforts. The  
16 focus issues are those which have been admitted in some form  
17 as contentions." Are you generally aware of the program  
18 reflecting that design?

19          A     Only very generally.

20          Q     Did you discuss with Duke aspects of that program?

21          A     Only very generally, not specifics.

22          Q     Tell me so I can have an idea of what the limits  
23 of your information are.

24          A     I knew that there were meetings being held and  
25 I knew that there was a brochure being mailed. I think that

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1 is the limit of my knowledge.

2  
3 Q Skipping further down it says here, "All features..."  
4 and this is of media programs, "... are designed to humanize  
5 the plant." Are you familiar with that design feature?

6 A No, I am not.

7 Q Have you heard them use that term?

8 A I don't believe I have heard that term being used.

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1 BY MR. GUILD:

2 Q Mr. Chernoff, do you have that memo now?

3 A Yes, sir.

4 Q This has been received in evidence as Intervenor's  
5 EP-7. Now turn to the last page, please, and that's page 5.  
6 "Opinion Research" is the heading there. "The measurement  
7 for this program as been opinion research in the emergency  
8 planning zone." And then it goes on to describe some of the  
9 work that's been done. That's the opinion research that  
10 you conducted, isn't it?

11 A Yes, sir.

12 Q This information has not only confirmed the  
13 success of our Catawba information programs, but allowed us  
14 to tailor these programs to the informational needs of our  
15 community.

16 Now, do you agree with the observation by  
17 Ms. Cartwright as to the success of their information program?

18 A Yes, sir.

19 Q And do you agree that it's successfully accomplished  
20 the purpose or the object that she describes on page 1, and  
21 that is, public acceptance of the facility? I'm looking at  
22 the second paragraph where she characterizes the public  
23 acceptance efforts.

24 MR. CARR: I'm sorry, where are you, Mr. Guild?

25 MR. GUILD: Page 1, second paragraph.

1 BY MR. GUILD:

2 Q Do you see that, Mr. Chernoff?

3 A Mr. Guild, I'm not familiar with what their public  
4 acceptance efforts were in its entirety. Based on other  
5 survey research which we have done, based on the results of  
6 this survey I would say that an effort to gain public  
7 acceptance was successful.

8 Q Right. And that would be reflected, among other  
9 things, by the fact that people living within the EPZ are  
10 less concerned about radiation effects and the plant as a  
11 hazard than those living farther from the plant, correct?

12 A Among other things, yes, sir.

13 Q Now, what role do you believe, based on your  
14 knowledge and professional experience, Mr. Chernoff, Duke's  
15 public information program -- and I use that as an all-  
16 inclusive term -- had on the comparative opinion results  
17 regarding the nature of the hazard from this nuclear plant  
18 on those living in the 10-mile EPZ as contrasted with the  
19 population as a whole?

20 A I would have to make a subjective judgment based  
21 on the fact that the survey research indicates a stronger  
22 acceptance with those plants that were open longer. I would  
23 have to feel that some of that impact is a result of their  
24 feeling comfortable with the information in support of Duke  
25 Power. I don't know how much. I can't give you a

1 quantitative analysis.

2 Q In part it's based on their information efforts,  
3 though?

4 A I would believe that would be true.

5 JUDGE MARGULIES: Mr. Guild, it's now quarter of  
6 1:00. Would this be an appropriate time to break for lunch?

7 MR. GUILD: Yes, sir, it would.

8 MR. CARR: My understanding is that Mr. Chernoff  
9 has a prior commitment at 2:00 o'clock. If we're about done  
10 maybe we could finish and let him go.

11 MR. GUILD: I frankly anticipated that this  
12 examination would be much quicker and to the point than it  
13 has been, given the fact that I erroneously assumed that  
14 we would have his survey results in evidence. And I could  
15 use the recess to determine whether or not I can elicit  
16 any further evidence that the Board will admit given your  
17 rulings on this witness.

18 JUDGE MARGULIES: How do we stand in anticipation  
19 of being able to conclude today?

20 MR. GUILD: Very poorly, Your Honor, in my opinion,  
21 given the objections and rulings that have occupied us  
22 so far this morning.

23 (Board conferring.)

24 MR. GUILD: Let me have a moment, Your HOnor.

25 (Counsel conferring.)

1 MR. GUILD: Mr. Chairman, I believe we can excuse  
2 Mr. Chernoff.

3 JUDGE MARGULIES: You have nothing further of  
4 Mr. Chernoff?

5 MR. GUILD: We can excuse Mr. Chernoff. Thank you,  
6 sir, for appearing.

7 JUDGE MARGULIES: Thank you for coming, Mr.  
8 Chernoff, you are excused.

9 (Witness Chernoff was excused.)

10 We will recess until 2:00 o'clock for lunch.

11 (Whereupon, at 12:45 p.m., the hearing was  
12 recessed for lunch, to reconvene at 2:00 p.m. the same day.)

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AFTERNOON SESSION

(2:00 p.m.)

1  
2 JUDGE MARGULIES: Back on the record. Mr. Guild,  
3 you may call your next witness.

4 MR. GUILD: We would ask Ms. Kathy Gordon to come  
5 forward and be sworn.

6 Whereupon,

7 KATHLEEN B. GORDON,  
8 was called as a rebuttal witness and having been first duly  
9 sworn, was examined and testified as follows:

## DIRECT EXAMINATION

10  
11 BY MR. GUILD:

12 Q Ms. Gordon, will you state your full name for the  
13 record, please?

14 A My name is Kathleen B. Gordon and I am a member of  
15 the Emergency Management Planning Review Committee.

16 Q Ms. Gordon, do you appear here as a result of a  
17 subpoena asking for your testimony?

18 A Yes, I do.

19 Q Would you explain some general background, please,  
20 for the Judges and the parties about the organization and  
21 operation of the Charlotte/Mecklenburg Emergency Planning  
22 Review Committee?

23 A Our committee was formed around seven months, actually  
24 in October of 1983. There was a nine-member committee appointed  
25 by the county commissioners of Mecklenburg County to look into

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1 the emergency evacuation plans for the county. At that time  
2 they gave us six charges. I have a list of those charges if  
3 you would like me to read what the charge of our committee was.

4 Q Let me show you a document that has been received  
5 in evidence and I believe that includes the charges of the  
6 committee. It is Intervenor's Emergency Planning Exhibit 42  
7 in evidence. It has a cover page that you may have seen  
8 before entitled, "Request for Board Action," and a page with  
9 a list of the members of the committee and I believe the  
10 background information and finally a page that is entitled,  
11 "Study Committee for Emergency Management Planning Charge  
12 One through Six."

13 A Right.

14 Q I also have a document attached to that that I  
15 believe to reflect a resolution that was adopted by your  
16 committee.

17 A Yes, that is right. We adopted that particular  
18 resolution at our May 16 meeting.

19 Q All right. I didn't mean to get ahead of your  
20 explanation of background but I want you to identify this  
21 document, Ms. Gordon. You were stating that your committee  
22 was given certain charges for its review.

23 A Right.

24 Q Would you explain what those were, please?

25 A Five out of the six charges of our committee



1 directly related to radiological incidents. The very first  
2 charge was to look into the adequacy of the EPZ zone around  
3 the Catawba Nuclear Plant and we are still in the process of  
4 our deliberations as a committee. We have met over the last  
5 seven months but we felt that because of the timeliness of  
6 these particular hearings, that the committee should take a  
7 position on that very first charge about the extension of the  
8 EPZ zone.

9 Q Is that committee position reflected in the  
10 resolution that I was just showing you that is attached as  
11 the last page to this exhibit?

12 A Yes, it is.

13 Q Have you met on a regular basis over the period  
14 since October of last year?

15 A We have met every other week for two hours. That  
16 also included a trip out to the Catawba Nuclear facility.

17 Q Can you tell me generally what the nature of your  
18 proceedings have been during those bi-weekly or semi-weekly  
19 meetings, every other week meetings?

20 A We have heard presentations by Duke Power, by  
21 CESA and by different environmental groups, by different  
22 citizen committees. We have heard from our local experts,  
23 our emergency management officials for Mecklenburg County.  
24 We have heard from our fire departments, police departments,  
25 medics, environmental protection agencies, different

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1 organizations such as Physicians for Social Responsibility  
2 and we have also held three public hearings trying to get  
3 public input on these particular problems.

4 Q Just for example, those proceedings of those meetings  
5 are reflected in minutes that are kept by the county  
6 administration and then later approved at subsequent meetings  
7 by the committee?

8 A Yes, that is right.

9 Q Just for example, I have a document that is entitled,  
10 "Minutes of December 14, 1983 Meeting." Is that what that  
11 appears to be?

12 A (Perusing document.) Yes, it is.

13 Q That is an example of minutes that are kept and the  
14 rather detailed minutes of the presentations that were made  
15 to your committee, correct?

16 A Right.

17 Q Just for example, this particular set of minutes  
18 reflects presentation by Mr. Wayne Broome, the Administrative  
19 Officer of the Charlotte/Mecklenburg Emergency Management  
20 Office, correct?

21 A Yes.

22 Q You have heard from Mr. Broome, for example, on  
23 other occasions as well, have you not?

24 A We have had Mr. Broome available as a resource at  
25 all of our committee meetings.

1 Q He has responded to questions from committee  
2 members on a variety of those occasions?

3 A Yes, he has.

4 Q Ms. Gordon, I want to show you another document  
5 that has been received in evidence. It has been received as  
6 Intervenor's Emergency Planning Exhibit 46 and it is entitled,  
7 "City of Charlotte Protective Response Plan for All-Hazards"  
8 with a date of 1982. Has that document been made available  
9 to the members of your committee?

10 A Yes, it has.

11 Q Have you included review of that document in  
12 various proceedings before your committee?

13 A We have discussed it. We have not taken any  
14 position on it at this point.

15 Q One of your charges includes a review of the  
16 adequacy of this All-Hazards Plan?

17 A Correct.

18 Q You still have that charge in process, is that a  
19 fair statement?

20 A Yes.

21 Q But the plan itself is not a stranger to your  
22 committee and has been one that has been the subject of  
23 your discussions and deliberations during the course of your  
24 existence. Is that a fair statement?

25 A Yes.

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1 Q You said that you heard from a variety of parties  
2 with respect to emergency planning for radiological  
3 emergencies for Charlotte and Mecklenburg County. I think  
4 you said you heard, for example, from Carolina Environmental  
5 Study Group.

6 A Yes.

7 Q Has Mr. Riley made a presentation to your committee?

8 A Yes, he has.

9 Q On perhaps more than one occasion?

10 A He has also been available to us as a resource  
11 and he has on more than one occasion made a presentation.

12 Q Similarly to Mr. Broome present at most meetings  
13 and available for answering questions committee members might  
14 have?

15 A Yes.

16 Q All right. Have Duke Power Company also had  
17 representatives at most of your meetings?

18 A Yes, they have.

19 Q I see Mr. Carter sitting here. Has he been a  
20 resource person to your committee?

21 A Yes, he has.

22 Q Similarly to Mr. Broome and Mr. Riley been available  
23 to answer committee member's questions as they came up?

24 A Yes.

25 Q In addition, has Duke Power Company made substantive

1 presentations on the issue of the adequacy of emergency  
2 planning for radiological emergencies at the Catawba Station  
3 to your committee?

4 A Yes.

5 Q Would you describe briefly the nature of those  
6 presentations by Duke?

7 A At our very first meeting we had a presentation  
8 by Duke and they went into an in-depth discussion about  
9 radiation, what it does. We have had testimony from Mary  
10 Burch and Mike Glover who came and made a presentation to us  
11 and talked to us about their plan.

12 Q Did you have an opportunity to address questions  
13 to those persons with respect to their presentations and the  
14 adequacy of the existing plan for Charlotte?

15 A We had that opportunity.

16 Q Did you as a member of the committee, Ms. Gordon,  
17 understand that one of your charges was to arrive at a  
18 considered conclusion having heard these presentations as to  
19 the adequacy of the existing emergency planning zone, the  
20 about 10-mile EPZ for Catawba, in a fashion so that the  
21 results of your deliberations could be presented to this  
22 Atomic Safety and Licensing Board that was going to reach a  
23 conclusion about that adequacy for the Catawba plant?

24 A No, we did not. When Chairman Odom of the County  
25 Commission first gave us our charges he told us to take as long

1 as possible and he did not give us any type of deadline at  
2 all.

3 Q All right. In your deliberations and in your  
4 proceedings, were members of your committee made aware of  
5 the status of these proceedings that would be considering  
6 emergency planning issues for the Catawba license?

7 A We were given announcements. Phil Carter had  
8 mentioned that the hearings were taking place and Jess Riley  
9 also made announcements but there was never a specific charge  
10 related to our committee as we needed to come up with any type  
11 of recommendation before these hearings began.

12 Q Were you informed that the hearings were initially  
13 scheduled for sometime earlier than they were actually  
14 commenced? They were commenced the first week in May. Were  
15 you informed, for example, that the hearings were at one time  
16 scheduled to commence in March of this year?

17 A I really can't recall that.

18 Q And that previous to that, how about information  
19 that they were originally scheduled to begin in January of 1984?

20 A I can't recall that either.

21 Q During the course then of your review and meetings,  
22 were requests made to you by various participants, resource  
23 people, perhaps Mr. Riley with Carolina Environmental Study  
24 Group and others that you consider reaching a determination on  
25 the size and configuration of the emergency planning zone for

1 the plant one of your charges and reached that decision in a  
2 sufficient time to be able to convey that information for  
3 consideration in these hearings?

4 A I can't recall that being made specifically to our  
5 committee as a definite time. That may have been stated  
6 from a resource person but as far as a charge or a timeframe,  
7 we didn't have that as a committee.

8 Q What I am trying to understand is you explained  
9 earlier that your committee reached a conclusion that it was  
10 appropriate to decide that charge now within recent memory,  
11 May 16, such that it could be conveyed through the county  
12 commission to the NRC, so that it would be considered by the  
13 NRC and I guess what I am trying to understand is why you  
14 reached that decision. What was the basis for your reaching  
15 that decision?

16 A Yes. I am sorry. We did know that these hearings  
17 were going to be taking place and we felt that this would be  
18 the appropriate time for that recommendation.

19 Q Is it fair to say that there was some debate about  
20 whether or not such a decision should have been made at that  
21 point in time, that there was sentiment against reaching a  
22 decision?

23 A Yes. that is correct. There was quite a bit of  
24 debate about the timeliness of it and taking it out of  
25 context so-to-speak. That was argument that was used from the

1 opposition. Is it fair to say that the resource people from  
2 Duke Power Company communicated the position that the  
3 committee should not reach a decision on that issue now or  
4 within recent past and should await final completion of all  
5 its work?

6 A I don't recall Duke Power specifically saying that.  
7 There were communications to our chairman which we did not  
8 receive from Duke Power indicating those in a form of a letter  
9 but as far as speaking at a meeting to that, they didn't.

10 Q Did your chairman, Dr. Nurken, communicate that  
11 view as his own to the committee and urge you to wait in  
12 reaching a decision on this issue until you had completed your  
13 charges completely?

14 A Yes, he did.

15 Q Do you have a copy of your May 16 resolution before  
16 you, Ms. Gordon?

17 A Yes.

18 Q Was the subject of passing on the question of the  
19 adequacy of the Catawba EPZ set for consideration at your  
20 May 16 meeting in advance?

21 A Yes, it was set two weeks in advance. Since our  
22 weeks are every two weeks, it was sent at the meeting  
23 immediately prior to our May 16 meeting.

24 Q All right. So the meeting prior to May 16 included  
25 a decision by the committee to take up this specific issue of



1 the adequacy of the EPZ for Catawba at the May 16 meeting,  
2 correct?

3 A That's right.

4 Q Was that decision made after the debate about the  
5 appropriateness of that action that we just talked about?

6 A Yes.

7 Q The majority of the committee members present and  
8 voting resolved to reach that conclusion at the May 16  
9 meeting?

10 A Right.

11 Q Then at the May 16 meeting the resolution before us  
12 that is part of Intervenor's Exhibit 42 in evidence was  
13 presented to the full committee present and voting?

14 A That is correct.

15 Q Can you tell us the procedure that led to its  
16 adoption, please?

17 A There was some discussion again about the resolution  
18 and Roy Alexander made the motion for this and it was  
19 seconded by Calvin Davis and then a vote took place and the  
20 vote was four votes for the extension and one vote against  
21 and one abstention by Chairman Nurken. There were three  
22 committee members absent.

23 Q I am looking at the second page of the document in  
24 front of me, the list of committee members. Did you take a  
25 position on the resolution, Ms. Gordon?

1 A Yes, I did.

2 Q How did you vote, please?

3 A I voted for the extension.

4 Q Mr. Alexander, the moving member of the committee  
5 and who else voted in favor?

6 A Calvin Davis, Roy Alexander, myself and -- let's see.  
7 I don't have my list of committee members.

8 Q How about Ms. Stevenson, Sarah Stevenson?

9 A Yes, Sarah.

10 Q You stated previously that Dr. Nurken abstained and  
11 who voted in opposition to the motion?

12 A Dr. Snyder was the only one to vote in opposition.

13 Q That leaves the three committee members absent,  
14 Mr. Burkhalter, Mr. Creason and Ms. Cherry, is that right?

15 A Yes.

16 Q Are you aware of any public statements by any of  
17 those three members as to their views or position on the issue  
18 of the extension -- the resolution?

19 A I know that Ms. Cherry is in favor of the extension.

20 MR. CARR: Objection, Your Honor. I move that that  
21 be stricken. There is no basis in the record for that.

22 There is no formally binding matter for the committee which  
23 would reflect that.

24 BY MR. GUILD: (Resuming)

25 Did Ms. Cherry communicate that position to the

1 Mecklenburg county commissioners?

2 A Yes, she did. She sent a letter to each of the  
3 commissioners along with my signature and Roy Alexander as  
4 three committee members.

5 Q All right. At the meeting of May 16, was there a  
6 quorum present?

7 A Yes.

8 Q Did a majority of those present and voting support  
9 the resolution?

10 A That's right.

11 Q It was adopted?

12 A Yes.

13 Q Was there discussion subsequent to the adoption of  
14 the resolution as to its transmittal and consideration by the  
15 Mecklenburg county commissioners?

16 A Chairman Nurken said that he would communicate our  
17 resolution to Chairman Odom of the county commission and  
18 that is how it was left.

19 Q I was present at the meeting and I recall that  
20 there was discussion that the Mecklenburg county commissioners  
21 were to meet the following week, I believe, on a Monday. Is  
22 that correct?

23 A That's right.

24 Q And that there was a rule of protocol of the county  
25 commission that there must be 48 hours prior notice for

1 including a new item on the agenda. Is that your understanding  
2 of the discussion?

3 A Yes, that is right.

4 Q And that it was urged on Dr. Nurken, the chairman  
5 of the planning review committee, that he expeditiously  
6 transmit the resolution of the committee so that it could be  
7 included on the agenda for the following Monday meeting. Is  
8 that right?

9 A Yes. He said that he would do all in his power to  
10 do that.

11 Q Are you aware of whether or not the resolution was  
12 in fact transmitted in sufficient time to be included on the  
13 following Monday's agenda?

14 A I am sorry. I don't know what action Chairman  
15 Nurken took. He advised me in a telephone conversation that  
16 he had indeed sent the resolution to Chairman Odom but it  
17 was not able to be on the agenda.

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1 Q Was there a discussion of -- Ms. Gordon -- of  
2 members of the Committee who had supported the resolution  
3 themselves presenting the resolution to the County Commission?

4 A Yes, there was.

5 Several of us suggested that we call the County  
6 Commissioners ourselves and see if we could get the item  
7 included on the agenda, and Chairman Nurken said he would  
8 take care of it.

9 Q Did Chairman Nurken discourage you from doing  
10 that in saying he would favorably represent your position  
11 as Chairman of the Committee to the County Commissioners?

12 A Yes.

13 Q I am going to show you a document that has been  
14 received in evidence as Applicants' Emergency Planning Exhibit  
15 18. It is a press release.

16 Do you understand that in fact Dr. Nurken drafted  
17 and circulated a press release the following day? It is  
18 reflected in the document I am showing you.

19 (Document handed to witness )

20 A Yes.

21 Q Now, did Dr. Nurken circulate this press release  
22 to you and other member of the Committee before he had it  
23 publicly issued?

24 A This was not approved by the Committee.

25 Q Was it circulated to you in advance of its

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1 publication?

2 A Not to me.

3 Q Did Dr. Nurken make any representations to the  
4 Committee that he intended to issue his own press release  
5 describing the Committee's action?

6 A No.

7 Q And, were you aware of any other member of the  
8 Committee, including those who were proponents of the  
9 resolution, issuing a press release reflecting their views?

10 A Dr. Nurken, I understand, called Roy Alexander,  
11 after issuing the press release, and had the press release  
12 sent to him by courier.

13 Roy looked over the press release and approved it.

14 Q All right.

15 A But as far as any other involvement with Committee  
16 members --

17 Q It was not considered, taken up by the full  
18 Committee?

19 A No.

20 Q In your opinion as a member of the Committee, does  
21 this press release speak for the Emergency Planning Review  
22 Committee?

23 A No.

24 Q Does the resolution you adopted May 16th, speak  
25 for the Emergency Planning Review Committee?

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1           A           I would say that it does because the Committee  
2 voted on it.

3           Q           Now I am looking at the resolution, Ms. Gordon,  
4 and there the resolution, after a preamble, explaining the  
5 goal of assuring that citizens of Mecklenburg County have  
6 in fact an effective, flexible and sufficient emergency  
7 plan, if you will -- I'm paraphrasing. The resolution has  
8 several "whereas" clauses that are described as findings and  
9 recommendations.

10                    Do you understand those "whereas" clauses to  
11 represent conclusions of the Committee?

12           A           Yes.

13           Q           And after the "whereas" clauses which will speak  
14 for themselves, the following appears:

15                    "Therefore, the Mecklenburg County Board of  
16 Commissioners is hereby requested to contend to the Atomic  
17 Safety and Licensing Board for the extension of the Emergency  
18 Plan zone limits of the Catawba Plan to provide further  
19 security to residents and others in the affected areas of  
20 the Southwestern quadrant of the County."

21                    Does that fully and accurately reflect the  
22 conclusion by your Committee?

23           A           Yes.

24           Q           Now, Dr. Nurken's press release observes that you  
25 made no specific recommendation with respect to a 7-mile

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1 extension of the EPZ.

2 Are you aware that the Judges in this case have  
3 allowed a contention -- revised a contention that originally  
4 asked that all of Charlotte be included in the Emergency  
5 Planning Zone, to limit it to a specific example of a  
6 geographic boundary that happens to be seven miles from the  
7 facility?

8 A Yes.

9 Q I'm sorry, 17 miles from the facility.

10 A 17.

11 Q Another seven miles beyond the ten, all right.

12 Now, is there a reason why your Committee did  
13 not specifically recommend a 17-mile EPZ limit or any  
14 specific geographical boundary?

15 A Yes. We wanted to leave that open for the County  
16 Commissioners to decide. Perhaps, we thought, that they  
17 would want to do more than the 17 miles.

18 Q You are aware in your review work, that on the  
19 northwest side of Charlotte there is an Emergency Planning  
20 Zone for Duke's McGuire Nuclear Facility, for example?

21 A Right.

22 Q And while that is not specifically within the  
23 jurisdiction of this Licensing Board in this proceeding,  
24 you are considering the effects of the proximity of that  
25 plant as well in your deliberations as to the adequacy of



mm5 1 emergency planning for Charlotte-Mecklenburg?

2 A There has been a lot of concern for the citizens  
3 of Charlotte in the northern part of the County.

4 Q And does that provide an additional basis why a  
5 specific geographical boundary that goes into -- that includes  
6 only parts of southwest Charlotte was not specified in  
7 your resolution?

8 A Yes.

9 MR. GUILD: Ms. Gordon, thank you very much for  
10 appearing. I know you are sort of under the weather, so I  
11 appreciate your patience in waiting on us.

12 Others may have questions for you.

13 Mr. Chairman, that concludes our examination.

14 JUDGE MARGULIES: Mr. Johnson?

15 MR. JOHNSON: Staff has no questions.

16 JUDGE MARGULIES: Mr. Wilson?

17 MR. WILSON: State has no questions.

18 JUDGE MARGULIES: Do you have any questions,  
19 Mr. Riley?

20 MR. RILEY: I do not.

21 MR. CARR: Your Honor, I have a few questions.

22 CROSS EXAMINATION

23 BY MR. CARR:

24 Q Ms. Gordon, I think you and Mr. Guild have  
25 probably covered most of my questions. Let me just, if I

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1 could, I would like to show you a couple of documents here.

2 There was discussion of a press release that  
3 Dr. Nurken issued.

4 A Right.

5 Q That you and Mr. Guild had?

6 A Uh, huh.

7 Q You have seen that press release?

8 (Document handed to witness)

9 A This is the first copy I have had this morning.  
10 I saw it when a member of the media contacted me briefly.

11 Q Let me point you to the fourth paragraph on the  
12 first page. And I will ask you to take a look at that.

13 Now, does that paragraph state in its last  
14 sentence, that the issue of licensure of the Catawba facility  
15 is not part of the charge to the Committee?

16 A That's right.

17 Q Now, were you aware, Ms. Gordon, that on May 17th,  
18 1984, Dr. Nurken drafted a letter which sent the motion to the  
19 County Commission?

20 A I have not seen that letter.

21 Q Well, let me show you --

22 MR. GUILD: I haven't seen it either.

23 (Document handed to Parties for perusal)

24 BY MR. CARR:

25 Q Now this is a letter dated May 17, 1984, and it

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1 is to Mr. T. L. Odom, Chairman, Mecklenburg County Board of  
2 Commissioners. And it is signed by Harry A. Nurken, PhD,  
3 Chairman, Emergency Management Planning Review Committee.

4 Is that the Committee of which you have been  
5 speaking?

6 A Yes.

7 Q Is Dr. Nurken the Chairman of that Committee?

8 A Yes.

9 Q Now just above the signature it says that the  
10 motion --

11 MR. GUILD: Mr. Chairman, I am going to object.  
12 The witness has identified Dr. Nurken's name, and the fact  
13 that he is Chairman of the Committee.

14 The record should reflect Dr. Nurken is not here,  
15 Dr. Nurken is obviously not available to respond to many,  
16 many questions that I would have of him about the substance  
17 of this letter.

18 Now, if it is counsel's intention to attach  
19 substantive evidentiary value to this letter by Dr. Nurken,  
20 we very strongly object and would seek an opportunity to  
21 have Dr. Nurken appear and respond to questions about his  
22 opinions and views which are reflected in that document.

23 JUDGE MARGULIES: Let's find out what the  
24 substantive question is. Proceed counsel.

25 MR. CARR: Thank you.

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1 BY MR. CARR:

2 Q Now above Dr. Nurken's signature, is there a  
3 paragraph that says "The motion is as follows:" Then it  
4 quotes the last portion of the resolution that was adopted  
5 by the 4 to 1 Committee vote, is that correct?

6 A Could I see that?

7 (Document handed to witness)

8 Yes.

9 Q So this letter then transmits to the Committee.  
10 Would you please read for the record the third  
11 paragraph in that letter?

12 A Okay.

13 "It has been reported in the media that our  
14 Committee has finished its deliberations and that we have  
15 adopted and recommended a plan calling for a seven-mile  
16 extension of the EPZ at Catawba. It should be clearly  
17 understood that our Committee is far from completing its  
18 study of the items contained in your charge to us. Further,  
19 the Committee has not adopted any plan for the EPZ and we  
20 have not recommended a seven-mile extension of the EPZ."

21 MR. GUILD: Is there a question, Mr. Chairman?

22 MR. CARR: No, I have just asked her to read it  
23 into the record, your Honor.

24 MR. GUILD: Then, Mr. Chairman, I would ask it be  
25 stricken. If it is a premise for a question, then you know

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1 perhaps there is a basis for asking it. If it is to be read  
2 into the record, it is to be read into the record for some  
3 substantive value.

4 It is hearsay, it is objectionable. Dr. Nurken  
5 is not here, there is no question asked about it. It is not  
6 as a vehicle for cross examination.

7 Mr. Carr is trying to get in as evidence the words  
8 of a witness who is not present and not subject to cross  
9 examination. I would love to talk to Dr. Nurken about that  
10 paragraph, but Dr. Nurken is not here.

11 MR. CARR: You could have subpoenaed him,  
12 Mr. Guild.

13 MR. GUILD: The obligation is on the part of the  
14 proponent of the evidence to present it in an admissible  
15 form, Mr. Chairman. It is not my duty to present Dr. Nurken.

16 If Dr. Nurken has admissible relevant evidence that  
17 is favorable to Applicants, they should present him by way  
18 of a rebuttal witness or by way of a direct witness, which  
19 they did not. I object to having counsel have a witness read  
20 something into the record. It is clearly hearsay and  
21 objectionable.

22 MR. CARR: Mr. Chairman, Mr. Guild time after time  
23 after time -- in fact at great length this morning attempted  
24 through Mr. Chernoff -- he takes a document that he got in  
25 discovery and asked the witness to read a sentence or a

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1 paragraph from it and leaves it at that.

2 MR. GUILD: As a premise for a question.

3 BY MR. CARR:

4 Q Now, do you have any doubt that this is what  
5 Dr. Nurken said in his letter?

6 MR. GUILD: Mr.Chairman, I have an objection  
7 pending. The counsel simply asked the witness to read it for  
8 the record. He had no question and he left it there.

9 I would move to strike it, and it is objectionable.

10 JUDGE MARGULIES: Now he is following it up with  
11 a subsequent question.

12 MR. GUILD: No, sir, that doesn't solve the  
13 problem, Judge. The way the record remains, is there is a  
14 substantive piece of evidence that is hearsay that Mr. Carr  
15 has had the witness read in.

16 Now, unless he wants to withdraw that last  
17 question and remove that part from the record and then  
18 reformulate a question, I ask for a ruling on my objection  
19 so that somebody will be able to review the way evidence is  
20 considered in this case, Judge. I object.

21 JUDGE MARGULIES: Your objection is overruled. He  
22 read it into the record as preliminary to asking this question  
23 which he is --

24 MR. GUILD: That is your observation. I don't  
25 agree it is an accurate reflection of the state of the record,

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1 Mr. Chairman. I would ask that the portion read be stricken.

2 JUDGE MARGULIES: The request is denied.

3 MR. CARR: Excuse me. Do you want me to restate  
4 the question?

5 JUDGE MARGULIES: You can ask it.

6 BY MR. CARR:

7 Q Do you remember the question, Ms. Gordon?

8 A No.

9 Q Do you have any reason to doubt that that is  
10 Dr. Nurken's view as Chairman of the Committee?

11 MR. GUILD: Objection.

12 You can't ask -- you can't avoid a hearsay objection,  
13 your Honor, by putting up a witness, or taking a witness who  
14 is there and saying, do you think that the witness who is not  
15 here and subject to cross examination would express this  
16 view, because that simply allows by the back door the hearsay  
17 evidence that is not reachable through cross examination.

18 (Board conferring)

19 JUDGE MARGULIES: We will limit the questions to  
20 whether the witness knows, not whether she has reason to believe  
21 but let's get our witness' knowledge. Specific knowledge.

22 Ask here whether she knows that that is  
23 Dr. Nurken's position.

24 BY MR. CARR:

25 Q Do you know that this is Dr. Nurken's position?

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A Do I know that it is Dr.Nurken's position?

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Q That's correct.

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A It has got his name on it.

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JUDGE MARGULIES: Independent of the letter, in your association with Dr. Nurken, and being affiliated with him, do you know that to be his position?

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THE WITNESS: I would disagree with a portion of this paragraph that says, "further, the Committee has not adopted any plan for the EPZ."

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JUDGE MARGULIES: The question is not whether he is correct or not. The question is whether you know that to be his position.

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THE WITNESS: I would say this is his position.

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1 BY MR. CARR:

2 Q Now, Ms. Gordon, are you aware -- well, let me  
3 ask you one other question. There was some discussion between  
4 you and Mr. Guild about your vote on the 16th of May -- is  
5 that the right date?

6 A Right.

7 Q And about 48 hours to get the agenda, or to get the  
8 matter before the County Commission. Do you know when  
9 Mr. Al Marshal --

10 A Hal Marshall?

11 Q Yes.

12 JUDGE MARGULIES: I think at this point, Mr. Carr,  
13 if you could go back to counsel table --

14 MR. CARR: I have one more document to show her  
15 which I'm leading up to now.

16 JUDGE MARGULIES: Okay.

17 BY MR. CARR:

18 Q And Mr. Marshall is to the Commission?

19 A That's right.

20 Q Now do you recall what Mr. Marshall said about the  
21 ability to get that vote on the agenda, following when the  
22 vote was taken?

23 A I believe he said that the agenda had already been  
24 set, that it was the day before, was the deadline. And then  
25 I came back with the question and said, well, I know there

1 are ways that you can still get on the agenda. And he came  
2 back and said well, I think that there have been some rule  
3 changes, you know. But I'm not really quite sure of the  
4 procedure.

5 Q So he told you, in effect, that the agenda closed  
6 the day before, which would have been Tuesday, for the  
7 following Monday's meeting?

8 A Yes.

9 Q And did he also inform you that the way to get the  
10 matter on the agenda at the time of the vote was to get a  
11 unanimous vote of the Commissioners?

12 A I do seem to remember that, but I can't recall the  
13 particulars of that.

14 Q Okay. Do you know whether that vote by the  
15 Commissioners was, in fact, taken at their meeting following  
16 May 16th?

17 A I don't.

18 Q All right. Do you know whether or not your resolution  
19 has been before the County Commission?

20 A Yes, the resolution was before the County Commission  
21 at their last meeting.

22 Q Which would have been this Monday, is that correct?

23 A Right.

24 Q Now, I would like to show you one final document,  
25 Ms. Gordon. You were at that meeting, were you not?

1 A Yes, sir.

2 Q And you addressed the County Commission in favor of  
3 the resolution, did you not?

4 A That's right.

5 Q Was there any other member of the committee there?

6 A Not at that time. Another committee member came  
7 in after I spoke, but I was the only committee member there  
8 and that's why I spoke.

9 Q All right. Let me just show you -- this is the  
10 agenda for last Monday's meeting.

11 MR. GUILD: Could I see a copy of that?

12 MR. CARR: Sure.

13 (Counsel reviewing document.)

14 BY MR. CARR:

15 Q I show you a document entitled, "Board of County  
16 Commissioners, Mecklenburg County, Regular Meeting.  
17 Education Center, June 4, 1984, 9:00 a.m., Agenda Memorandum."

18 And under Item 2, "Items set for a specific time,"  
19 is subparagraph (a) -- do you feel up to reading this or do  
20 you want me to read it?

21 A Go ahead, if you would.

22 Q I will read it in deference to the witness's  
23 throat problem. And this reads, "The Board will consider  
24 the C-M emergency management planning review committee's  
25 motion on emergency preparedness planning. Recommendation:

1 County Manager recommends that the Board take no action on  
2 the committee's 5/16/84 motion. Inform committee that  
3 County Commission will act on recommendations when a  
4 complete report on 'emergency plans for accidental, natural  
5 or man-made disasters in Mecklenburg County' is made.  
6 Request that such work be completed in a timely fashion."

7 Now, was that the matter that was before the  
8 committee Monday morning?

9 A Yes.

10 Q I'm sorry, I mean the Commission Monday morning.

11 A Yes.

12 Q And that was the recommendation that we've been  
13 discussing here?

14 A Right.

15 Q And what action did the County Commission take on  
16 that agenda item?

17 A They voted not to take any position at this time.

18 Q Did they vote to send the matter back to the  
19 committee and ask the committee to complete its charge in full?

20 A Yes.

21 Q So in effect, then, the matter has been sent back  
22 to you by the County Commission and it's still under  
23 consideration by the committee?

24 A Right.

25 MR. CARR: Would you give me just a second?

(Pause.)

1 MR. CARR: Nothing further, Your Honor. Thank you.

2 MR. GUILD: A few more questions, Judge.

3 Counsel if I may have the two documents that you  
4 used to question on the resolution.

5 REDIRECT EXAMINATION

6 BY MR. GUILD:

7 Q Ms. Gordon, with respect to Mr. Carr's last question,  
8 he showed you the agenda from the County Commission meeting,  
9 from its June 4th meeting, and it reads, again, "County  
10 Manager recommends that the Board take no action on the  
11 committee's 5/16/84 motion. Inform committee that County  
12 Commission will act on recommendations when a complete report  
13 on emergency plans for accidental, natural or man-made disasters  
14 in Mecklenburg County is made. Request that such work be  
15 completed in a timely fashion."

16 Now, is it your understanding that that is the  
17 recommendation that was adopted by the Commission?

18 A No. They want our full report.

19 MR. CARR: Could you speak up some?

20 THE WITNESS: They want our full report but they  
21 voted to table the particular recommendation that came out  
22 of the 16th meeting.

23 BY MR. GUILD:

24 Q They simply took no action on the recommendation?

25 A That's right.

1 Q Now when it says that a request be made to your  
2 committee that work be completed in a timely fashion, had  
3 you ever been given a time limit for your work?

4 A No, we have not. And that's one thing that I  
5 mentioned to Commissioner Green, that we had not been given  
6 the timeframe to work in. And I think what ultimately came  
7 out of the County Commission meeting was that we were going  
8 to be given a timeframe.

9 Q Have you been given one yet?

10 A Not that I know of. I don't even know when our  
11 next meeting is.

12 Q Now, I'm looking at the May 17, 1984 letter to  
13 Chairman Odom of the County Commission, by Dr. Nurken, and  
14 I understand -- it also shows a copy goes to Mr. Gerald Fox.  
15 He's the County Manager, is he not?

16 A Yes.

17 Q He's the same county manager who made the recommen-  
18 dation to take no action?

19 A Yes.

20 Q Now, was this letter from Chairman Nurken to  
21 Mr. Odom and Mr. Fox copied to you and other members of the  
22 committee?

23 A No.

24 Q Now first, the letter to Chairman Odom and Mr. Fox,  
25 County Manager Fox, includes a number of elements that are

1 basically either the same or paraphrases from Chairman  
2 Nurken's press release. Do you agree with that generally?

3 A I really have no -- I have it here.

4 Q For example, the third paragraph, "It has been  
5 reported in the media that our committee has finished its  
6 deliberations..." et cetera?

7 A Right.

8 Q That's part of Dr. Nurken's press release, correct?

9 A Yes, that's right.

10 Q And your committee didn't act on the press release  
11 and it didn't act on the same paragraph that is communicated  
12 by Dr. Nurken to the Commission.

13 A No.

14 Q So in your view, that is, if anything, apparently  
15 Dr. Nurken's personal views and not those of the committee.

16 A Yes.

17 Q Dr. Nurken's transmittal letter to County Manager  
18 Fox and Commissioner Odom says, "No details as to the  
19 committee's opinion regarding the adequacy of the EPZ, the  
20 effect on the community of retention or extension of the  
21 EPZ, costs, ..." et cetera. Does that likewise reflect in  
22 your view, Dr. Nurken's personal judgment as compared to the  
23 official action of your committee? Did your committee approve  
24 that view?

25 A No. Because we didn't discuss this at all.

1 Q All right. Now finally, the resolution of your  
2 committee adopted on the 16th of May requested the Commission  
3 to urge the extension of emergency planning into Charlotte,  
4 and that was your conclusion. But that conclusion was founded  
5 on a number of factual findings that were the basis for that  
6 conclusion, correct?

7 A Yes.

8 Q Now, in the letter that Dr. Nurken sent, faithfully  
9 representing the views of the majority of your committee  
10 present and voting to the County Commission, are any of those  
11 factual conclusions included?

12 A No, but the factual conclusions you're talking  
13 about would be individual reasons of committee members.  
14 Dr. Nurken is correct in the sense that we did not, as a  
15 committee, sit down and give detailed background information  
16 as to why we took this position.

17 Q All right. But your committee, by majority vote,  
18 did adopt the factual conclusions that are included in the  
19 "For" and "Whereas" clauses that are prefaced to your  
20 concluding resolution, correct?

21 A Yes.

22 Q And that majority of the committee found, for  
23 example: "Whereas, the Atomic Safety and Licensing Board  
24 Hearing in the operating licensing proceeding for the Catawba  
25 plant have admitted a contention for expanding the emergency



1 planning zone an additional seven miles into the heavily-  
2 populated area of Mecklenburg County..." you made that as a  
3 finding; that was one of the premises behind your conclusion,  
4 correct?

5 A Yes.

6 Q Secondly, "Whereas, numerous studies have shown  
7 that the existence and implementation of well-designed  
8 emergency plans can greatly reduce fatalities and injury."  
9 A second premise behind your conclusion?

10 A Yes.

11 Q "Whereas, the location of the Catawba plant, just  
12 10 miles from the city of Charlotte and directly upwind of  
13 that city, and tens of thousands of nearby residents in the  
14 path of prevailing winds." A further premise behind your  
15 conclusion?

16 A Yes.

17 Q And finally, "Whereas, the responsibility for the  
18 expense of establishing and maintaining an emergency planning  
19 zone, whatever its extent, should be borne by all the  
20 beneficiaries of the operating plant and not merely its  
21 immediate neighbors." Another factual premise for your  
22 conclusion?

23 A Yes.

24 Q But those factual premises for your conclusion were  
25 not included in Dr. Nurken's letter, and only your conclusion

1 the bare conclusion by itself?

2 A That's right.

3 Q And it's on the basis of that bare conclusion  
4 without those supporting factual findings that County Manager  
5 Gerald Fox and Commissioner Odom recommended and adopted  
6 the no-action decision that they reached at the subsequent  
7 meeting. Correct?

8 A I would think so.

9 Q Dr. Nurken's letter says, "For over a month, our  
10 committee has deliberated as to whether it was appropriate to  
11 address the EPZ issue separate from our final recommendations."  
12 He goes on, and I'm omitting a sentence, "Unfortunately, the  
13 fears of some of the members of our committee that the EPZ  
14 issue would be taken out of context if addressed early have  
15 been realized through misinterpretation of our action."

16 Now, does that faithfully reflect your views and  
17 the views of the committee?

18 A I'm not sure what Nurken is talking about there.  
19 There was confusion initially in the media, and I think one  
20 concern that he had was that the media had said that our  
21 reports were conclusive, and that our work was done. And  
22 I think that's what his major concern was.

23 Q All right. Were the members of your committee under  
24 any confusion?

25 A Yes.

1 Q And how was that?

2 A Well, we had not seen the press release, for one  
3 thing. We had not seen the letter that Dr. Nurken sent  
4 Chairman Odom, so we really did not know what had been  
5 communicated to the Chair of the County Commission or to the  
6 media.

7 Q So you were under some confusion about Dr. Nurken's  
8 views as expressed to the Commission and to the press?

9 A Well, the media just started calling the different  
10 committee members and said that Dr. Nurken had said that we  
11 did not vote to extend the EPZ.

12 Q Focusing on your deliberations leading up to the  
13 May 16th vote and on the resolution that you adopted on  
14 May 16, were you under any confusion as to the findings and  
15 substance of your decision?

16 A No.

17 Q And you were present during the deliberations of  
18 the County Commission? I believe I recall -- you responded  
19 only to some questions by members of the Commission about  
20 the nature of the committee's decision, correct?

21 A Yes.

22 Q You didn't make an independent presentation of your  
23 resolution, did you?

24 A No, I only spoke as a committee representative  
25 when asked by the County Commission.

1 Q And responded to specific questions?

2 A That's right.

3 Q And there wasn't -- would it be a fair conclusion,  
4 then, Ms. Gordon, that the committee had before -- the  
5 Commission had before it Dr. Nurken's views, his personal  
6 views as Chairman as reflected in his letter, and only the  
7 conclusion of your committee without its supporting factual  
8 findings when it reached its decision to take no action  
9 at a subsequent meeting?

10 A Well, I know that the County Commission had  
11 background information. I think Chairman Odom had made  
12 reference to material that he had sifted through that previous  
13 weekend, so I really can't say. I think the staff had given  
14 them background information, but what it included I have  
15 no idea.

16 I do know that me and Roy Alexander and Betty  
17 Cherry had sent a statement to the County Commission for  
18 some background information that we felt might be helpful.

19 Q Ms. Gordon, do you stand behind the factual  
20 conclusions that are reflected in your committee's resolution,  
21 and do you also stand behind the conclusion that it is  
22 appropriate to expand the emergency planning zone for the  
23 Catawba facility, and would you commend those decisions to  
24 this Board?

25 A Yes, I would

1 Q Was Dr. Nurken present at the Commission meeting?

2 A No, he wasn't.

3 Q Did he cancel an intervening meeting of the  
4 Emergency Planning Review Committee?

5 A Yes, he did. He said that he had been requested by  
6 three committee members to cancel the meeting.

7 Q And have they ever canceled a meeting before?

8 A I think we may have canceled one meeting before.

9 Q Have you had an opportunity as a committee to take  
10 any action on Dr. Nurken's press release or his letter or  
11 any matters between the time of the adoption of your  
12 resolution and the most recent meeting of the County  
13 Commission?

14 A No, we haven't had a committee meeting since then.

15 MR. GUILD: Ms. Gordon, thank you very much for  
16 your appearance. I appreciate your patience.

17 BOARD EXAMINATION

18 BY JUDGE LAZO:

19 Q I just had one question by way of clarification.  
20 A few moments ago in response to a question by Mr. Guild  
21 I think you stated that your planning review committee had  
22 no time limit on completing its assignment.

23 Early on in the discussion when the examination  
24 first began you were describing the charge that had been  
25 given to your committee, and I think you responded to a

1 question regarding timing that the Commissioner -- and I  
2 assume that was Commissioner Green -- had said take as long  
3 as possible. And I'm wondering if perhaps you misspoke, and  
4 maybe you mean, to take as long as necessary.

5 A Yes. Yes. And that was Commissioner Odom.

6 Q Oh, that was the Chairman?

7 A Yes. Take as long as you need, I'm sorry.

8 Q All right. I just wanted to clear the record and  
9 be sure there was no misunderstanding. Thank you very much.

10 JUDGE MARGULIES: Mr. Carr?

11 RE CROSS EXAMINATION

12 BY MR. CARR:

13 Q Ms. Gordon, so that the record is clear, let me  
14 just make sure that I understand.

15 The purpose of the committee is to arrive at a  
16 recommendation for the County Council. Now, the County  
17 Council is the decisionmaking --

18 MR. GUILD: The Commission?

19 BY MR. CARR:

20 Q The County Commission, I'm sorry. The County  
21 Commission is the decisionmaker here; is that correct?

22 A That's true.

23  
24  
25  
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#16-1

1 Q You people just recommend things to them?

2 A That is right.

3 Q With respect to background information before  
4 the county commission, do you know whether or not they had  
5 the entire resolution before them, that they had ever seen  
6 the entire resolution?

7 A That we had passed at the May 16 meeting?

8 Q Yes.

9 A I assume they did. I really didn't see the  
10 information they had but I assume they did.

11 Q You didn't send it to them in the letter that you  
12 wrote?

13 A No.

14 Q There has been a lot about the resolution, just out  
15 of curiosity, who drafted it?

16 A Roy Alexander.

17 MR. CARR: Thank you. No further questions, Your  
18 Honor. Thank you, Ms. Gordon.

19 JUDGE MARGULIES: Mr. Riley.

20 BY MR. RILEY:

21 Q Ms. Gordon, do you know that Dr. Nurken in a  
22 conversation with Jack Horan who is a reporter for the  
23 Charlotte Observer indicated to him that he had no problem  
24 with the report that appeared in the Charlotte Observer in  
25 response to the actions on May 16 by your committee?

XXXXX

16-2

1           A     Do I know?  
2           Q     Do you know that?  
3           A     No.  
4           Q     Ms. Gordon, are you aware of the background by which  
5 that committee was established, namely that in September I  
6 made a request to the County commission to develop a position  
7 that could be transmitted to the Atomic Safety and Licensing  
8 Board in response to the emergency planning issue for Catawba  
9 and that at a subsequent meeting that Commissioner Bissell  
10 made the proposal that a Blue Ribbon Committee be appointed  
11 to advise the county commission in this regard and also in  
12 regard of the appropriateness of civil defense plans and that  
13 in the activities in that section of the commission, the idea  
14 was tossed in and also other emergency activities?

15           A     I was not aware of that.

16           MR. CARR: Excuse me, Ms. Gordon. I object to that,  
17 Your Honor. Mr. Riley sat there. He waived his first round of  
18 cross. Mr. Guild had opened up the establishment of the  
19 committee and Mr. Riley waits until there have been three or  
20 four rounds of questioning and then jumps in right at the end  
21 and goes into an entire new area. It is untimely and it is  
22 out of order and I object to it.

23           MR. RILEY: Judge Margulies, it is was simply a  
24 matter of going back to the original incentive that the  
25 commission had in setting up this committee.



1 JUDGE MARGULIES: The witness said she didn't know.  
2 Thank you for appearing, Ms. Gordon. You are excused.

3 (Witness excused.)

4 JUDGE MARGULIES: We will take a 15-minute break.  
5 (Whereupon, an afternoon recess was taken.)

6 JUDGE MARGULIES: Back on the record. We have been  
7 notified during the recess that Commissioner Bernthal has  
8 cancelled his site trip tomorrow and will reschedule it for  
9 another time.

10 We have one matter that we should not overlook, Mr.  
11 Guild. Have you been able to make copies of Exhibit 51 for  
12 identification?

13 MR. GUILD: No, sir, I haven't.

14 JUDGE MARGULIES: Let's not overlook it so the  
15 record will be complete. That related to the offer of  
16 proof for Mr. Charnoff.

17 MR. GUILD: Yes, sir.

18 JUDGE MARGULIES: You may call your next witness.

19 MR. GUILD: Would Mr. Oliphant come forward and  
20 resume the stand.

21 Whereupon,

22 JAMES THOMAS OLIPHANT,  
23 was recalled as a rebuttal witness and having been previously  
24 duly sworn, was continued to be examined and continued to  
25 testify as follows:

16-4

## 1 CONTINUED DIRECT EXAMINATION

2 BY MR. GUILD: (Resuming)

3 Q Mr. Cliphant, I appreciate your patience, sir. I  
4 will see if we can get through you quickly. Would you agree,  
5 sir, that in the event that there were an accident at the  
6 Catawba station and your park was operating today or this  
7 weekend with seasonal peak attendance that the evacuation of  
8 your facility would be a monumental task?

9 A No, sir, not a monumental task, no.

10 Q Even the Duke Power consultant who studied the  
11 issue used just those words, Mr. Cliphant. This is Mr.  
12 Lutz of the PRC Vorhees to Mr. Lee. You know Mr. Lee, don't  
13 you?

14 A Yes.

15 Q You worked with Mr. Lee in planning for that  
16 evacuation, right?

17 A Mr. Lee and several others.

18 Q This is Intervenor's Exhibit in evidence number 41.  
19 I just point you to the second page of his 1983 letter  
20 "In summary it appears that evacuation of Carowinds on a  
21 peak day is a monumental task requiring careful planning and  
22 good traffic control." Then he expresses a view of about how  
23 long it would take.

24 A Are you talking evacuation of the park or evacuation  
25 of the entire premises?

1 Q That is a good question. Was one of those a  
2 monumental task and not the other, Mr. Oliphant, or do you  
3 just not think it is a monumental task one way or the other?

4 A I believe the traffic flow on the highway would  
5 be more monumental of a task than it would be evacuating the  
6 park which is not my responsibility on that part.

7 Q Your responsibility stops when you get the people  
8 out of the park?

9 A Yes, sir.

10 Q Of course, in order for them to get out of the way  
11 of the hazard, the hazard being an airborne plume of radioactiv-  
12 ity in the event that there were an evacuation called for,  
13 getting them out of your park doesn't save their lives or  
14 protect their health and safety. You recognize that they have  
15 to get out not only of the park but the parking lot, that  
16 they have to get up the highway and out of harms way.

17 A Yes, sir. I understand that.

18 Q You know that where your responsibilities may stop  
19 at the park someone has to demonstrate that this monumental  
20 task of actually getting people out of harm's way can be  
21 accomplished in sufficient time to protect their health and  
22 safety?

23 A That is one reason that we elected to move on the  
24 alert status instead of waiting on the general evacuation alarm.

25 Q All right, sir. Help me understand that election,

16-6

1 Mr. Oliphant, that decision. You are aware are you not that  
2 the general public would be evacuated in response to a  
3 specific emergency broadcast system message that  
4 instructed them to take that action, to evacuate, correct?

5 A That is correct.

6 Q And that that emergency broadcast system message  
7 would be preceded by the sounding of the fixed siren system  
8 that is designed to alert people to tune into the emergency  
9 broadcast system, correct?

10 A Yes.

11 Q Why have the Carowinds people elected to act before  
12 the siren sounds, before the general public's evacuation  
13 message goes out and instead to evacuate earlier?

14 A Simply for more safety precaution and the time  
15 that it would take to move the people out, the number of law  
16 enforcement agencies we would have to use.

17 Q All right. Would you agree with Mr. Lee then that  
18 accomplishing the whole task, actually getting people out of  
19 harms way, is a monumental task?

20 A On the traffic flow, I would think so, yes.

21 Q It is not Mr. Lee's view. It is Mr. Lutz of the  
22 Vorhees firm's view expressed to Mr. Lee.

23 A I believe the traffic would be the worst.

24 Q I have driven up I-77 during the summertime and  
25 seen people backed up for miles trying to get in or out of

16-7

1 Carowinds. That happens, does it not?

2 A Yes, sir.

3 Q It happens on a considerably regular basis during  
4 the seasonal peak months, doesn't it?

5 A Not the back-up of I-77. No, sir.

6 Q How often does it happen?

7 A I would say probably three to four times a summer.

8 Q Those are during weekends?

9 A On Saturdays.

10 Q All right. When does that back-up on I-77 occur  
11 typically?

12 A Are you talking which month?

13 Q Time of day.

14 A In between the hours of ten to eleven or 11:30,  
15 somewhere in that neighborhood.

16 Q That is in the evening?

17 A No, sir. That is in the morning.

18 Q That is coming into the park?

19 A Yes, sir.

20 Q When does the park open?

21 A We open our gates, it depends on the crowd that we  
22 are expecting. Normally we open on Saturday morning at nine  
23 o'clock, the gates.

24 Q So the gates are open at nine o'clock. You are  
25 receiving people in from that time on. You open earlier

16-8

1 sometimes, don't you?

2 A Yes, sir, we do.

3 Q So nine o'clock or earlier. When you have traffic  
4 backed-up I-77 at eleven o'clock, that is in the face of  
5 people already flowing into the park beginning at nine o'clock  
6 or earlier, is that correct?

7 A Right.

8 Q Now regardless of how many bodies you have in the  
9 park at a given point in time, in other words the peak  
10 attendance not cumulative for a day but at a point in time,  
11 what is the maximum capacity of the parking lot?

12 A Fifty-five hundred cars that can be parked in spaces,  
13 probably approximately 300 to 400 more cars parked on what we  
14 call the berm area.

15 Q Do you use the berm area?

16 A Yes, sir. We have before. That again would be  
17 an unusual occurrence of probably three to four times per year.

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- 1 Q All right, sir. That takes it up to 5800 cars.
- 2 A Somewhere in that neighborhood.
- 3 Q And in addition to those 5800 cars, some people  
4 come by bus, don't they?
- 5 A That's correct.
- 6 Q And how many buses can you put in your lots?
- 7 A I have seen as many as 250 buses.
- 8 Q How about the capacity of 300 buses. Would you  
9 accept that?
- 10 A Yes, sir. Usually in other areas we can accommodate  
11 300 buses.
- 12 Q Well, Mr. Lutes of Voorhees says that you have a  
13 special parking lot for buses that has a capacity of about  
14 300.
- 15 A That's correct.
- 16 Q All right.
- 17 Now, that is in a lot in addition to the lot for  
18 5800 cars, right?
- 19 A Yes, sir.
- 20 Q Are there any other parking lots at Carowinds?
- 21 A The employee lots.
- 22 Q How many vehicles would you have there?
- 23 A I could not answer that question.
- 24 Q You have in excess of 1400 employees?
- 25 A Yes, sir. That's total amount of employees being

mm2

1 used at a peak period of time. But, we never have 1400 people  
2 at one time.

3 Q And, what is the maximum number of employees at  
4 one time, would you estimate.

5 A I would say approximately 500 to 600 people.

6 Q Does that reflect 600 vehicles, approximately?

7 A Not necessarily, no, sir.

8 Q How many vehicles are there?

9 A I could not answer that question.

10 Q Between 500 and 600?

11 A No, sir, I don't believe it would be that many.

12 Q All right.

13 A A lot of our employees are brought to work by  
14 their parents.

15 Q Mr. Lutes' letter, Exhibit 41, states: "Aside  
16 from the main parking lot and the lot for buses, there are  
17 other parking areas to be evacuated." And, he says those  
18 areas would not exceed 700 vehicles.

19 Do you agree with that?

20 A That's probably correct.

21 Q They are not all in one place though, are they?

22 A They are within, probably, a quarter of a mile of  
23 each other. Probably less than that.

24 Q Exit from the Carowinds Campground, the Ocean  
25 Island lot and the administration building lot are all via



mm3±

1 Catawba Trace?

2 A That's correct.

3 Q That's where the 700 would go?

4 A Yes.

5 Q That includes the employees in the administration  
6 building?

7 A That is correct.

8 Q How many would you have at the Carowinds camp-  
9 grounds?10 A I'd say approximately 200. Now, that is a  
11 capacity crowd at the campgrounds.12 Q Now, campgrounds sounds like you are camping. Is  
13 that what they are doing there?

14 A That's correct.

15 Q They have RVs, recreational vehicles?

16 A Yes, sir.

17 Q Do they have tents?

18 A Yes, sir.

19 Q Do they have trailers?

20 A Yes, sir.

21 Q How long do you figure it would take to pack all  
22 those things up and move them out?

23 A Probably an hour or more.

24 Q All right, sir.

25 Well, let's take somebody who is staying at the

mm4 1 campground and they have got themselves one of these  
2 recreational vehicles that is their only means of transporta-  
3 tion. I mean, they don't have a car with a trailer attached  
4 to it where they can, you know, unhitch the trailer and get  
5 in the car. They have got a recreational vehicle, one of those  
6 jobs that unfolds and plants on the ground and plugs in,  
7 et cetera.

8 Now, the people who are staying in that thing, that  
9 recreational vehicle in your campground, they are in the  
10 park. They have got to go do everything everybody else does  
11 to get out of the park, take as much time as the rest of the  
12 people do, depending on where they are in the park.  
13 Get back to the campground, pack up their RV, get in their  
14 RV and join the flow of traffic to get out.

15 Those steps would be required for them to  
16 evacuate, wouldn't it?

17 A That's correct.

18 Q How much additional time was included in the study  
19 for people who have to prepare to leave and leave from the  
20 campground?

21 A Would you repeat that question, please?

22 Q Sure. How much additional time was assumed in  
23 order to evacuate those staying in the campground, given  
24 that additional requirement to prepare to leave the campground?

25 A I'd say approximately a half hour or so.

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1 Q Was that included in the Voorhees study?

2 A I do not know.

3 Q Are you aware of anyplace where it is included?

4 A No, sir, I am not.

5 Q And that half hour or so, would be in addition to  
6 the time required for that same person to perform all the  
7 other steps to evacuate, correct?

8 A That's correct.

9 Q Now, you have estimated to Mr. Lutes that it would  
10 take two and a half hours to clear the park, correct?

11 A That's correct.

12 Since that recommendation, I have stepped that up  
13 between two, two and a half to three hours, because of an  
14 additional small area that we incorporated in the park this  
15 year. And this is another reason that we moved to elect to  
16 evacuate our own.

17 Q What is that additional area called?

18 A It is called Smurf Island. There is about 1000-  
19 people capacity on that particular island.

20 Q 1000 more people. How many more vehicles?

21 A That is figured into the peak number of patrons  
22 inside the park. It is the accessibility because we have  
23 to put them on small boats, or cross a ramp to get those  
24 off.

25 Q And how long would it take to get them off of

mm6

1 Smurf Island into the flow of exiting people from the rest  
2 of the park?

3 A I would say with a peak attendance, it would  
4 take us approximately 30 minutes to secure Smurf Island.

5 Q And that 30 minutes would be additional to the  
6 time otherwise required?

7 A Between two and a half to three.

8 Q All right, sir.

9 So, if you were vacationing at Smurf Island and  
10 you were staying in your RV at the campground, it would  
11 add another hour to your time and your family's time to get  
12 out of the park?

13 A No, sir, I don't believe that. No, sir.

14 Q Well, those are two additive things; getting out  
15 of Smurf Island, and that is a half an hour, and the second  
16 one is preparing your vehicle, which you are relying on to  
17 get out. These people are going to use their own vehicles  
18 to leave, aren't they?

19 A Well, we have a contingency plan to bring in  
20 buses from Charlotte.

21 Q But those buses are for unattended children,  
22 aren't they?

23 A For unattended children, or anyone we deem  
24 necessary to put on the buses.

25 Q Do you have a specific plan to bus the people who

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1 are in the campground instead of having them use their own  
2 vehicles?

3 A No, sir. Those plans have not been finalized at  
4 this time.

5 Q So, if you don't have a plan and they have to use  
6 their own vehicle -- and that is what I have assumed -- it  
7 would be a half an hour to get off Smurf Island, plus another  
8 half hour to prepare their vehicle on the campground to  
9 leave, and that would be an additional hour on top of the  
10 time that that person would otherwise take to exit the park?

11 Correct?

12 A Approximately, yes.

13 Q Now that takes it up for at least some of those  
14 people, of three and a half hours to clear the park,  
15 Mr. Oliphant. And I think you estimated to Mr. Lutes that it  
16 would take an additional one and a half hours to clear the  
17 parking lot, correct?

18 A Approximately, yes, sir. That, depending on the  
19 outside law services.

20 Q Well, if your estimate of an hour and a half is  
21 correct, that means it would take five hours for the park to  
22 be evacuated, including the people who now have to get from  
23 Smurf Island to their campground, prepare to leave and leave,  
24 correct?

25 A No, sir. Not a total of five hours. All that is

mm8 1 combined in there. From the moment the evacuation begins,  
2 the traffic begins. A lot of that is put in --

3 Q I understand all the magic of how everybody flows  
4 together into this orderly queue. But the two facets of time  
5 that you have just spoken of are for specific people whose  
6 time to evacuate will be added to the time that it would  
7 otherwise take. Isn't that the case?

8 A No, sir. I did not mean it to be added on to the  
9 time.

10 Q Where is the time going to come from?

11 A I am giving you a time period of two and a half to  
12 three hours for evacuation of the park, including Smurf  
13 Island.

14 Q Yes, sir. But then you also gave me a half an hour  
15 to prepare to leave the campground, and then we had an hour  
16 and a half to clear the parking lot. And that adds up to five  
17 hours, I submit.

18 A Not to me it does not.

19 Q Well, your math might be different from my math,  
20 but I get five hours. And if there is an error in my math,  
21 please point it out.

22 A If it takes me two and a half hours -- what you  
23 are saying, I'm putting two and a half hours time to put the  
24 people in the lot, I am not moving any traffic out until the  
25 evacuation is complete. That doesn't make good sense.

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1 Q No, sir, that is not what I said at all.

2 What I said is for the people who are on Smurf  
3 Island, they take an extra half hour than anybody else does.  
4 That is your testimony, not mine.

5 A That's why I said between two and a half to three  
6 hours to finish the park.

7 Q That's right. Then you also have another half  
8 hour for people who apparently weren't accounted for, who  
9 were at the campground who had to prepare to leave.

10 A That's in with that additional half hour with  
11 Smurf Island to move the people out. We have a tram to  
12 transport the people from the park to the campground, or we  
13 can elect to put those on buses.

14 Q That's fine, Mr. Oliphant. I don't want to argue  
15 the point with you. If you think magically you save a half  
16 an hour somewhere in there, I would love for you to tell me  
17 about it, because I have heard you tell me it takes a half  
18 an hour to do this step in addition to all other steps --

19 A All that is included in the average time to  
20 evacuate the park.

21 Q Well, we are not talking about average time or  
22 average people. We are talking about total time to get  
23 everybody out, because that is the measure, right?

24 A All right. Your average time to get everybody out  
25 would be between two and a half to three hours.

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1 Q We are not interested in average, Mr. Oliphant.  
2 We are interested in the last person to leave. That is what  
3 Mr. Kulash studied. Aren't you aware of that?

4 A No, sir.

5 Q You were thinking he was doing average time.

6 A I'm telling you what it would take us to move the  
7 people from the park --

8 Q On average?

9 A -- to the parking lot to begin the evacuation out.

10 Q Well what I want to know, Mr. Oliphant, is the  
11 total time, the last person out.

12 MR. MC GARRY: I am going to object to any further  
13 questions in this regard. It has been asked and answered  
14 about four or five times.

15 This gentleman, it is his expertise, he is the  
16 expert with respect to evacuation of Carowinds. He says it  
17 is his judgment it would be between two and a half to  
18 three hours to get all the people out of the park --

19 MR. GUILD: That is not at all what he said,  
20 Mr. Chairman. He said average.

21 MR. MC GARRY: He said it four times.

22 MR. GUILD: No, sir, he said it several times,  
23 but he said it different every time he said it.

24 The fact of the matter is the gentleman may or may  
25 not know, but the study, the task under study is to get the



mml1

1 last person out of the park. It is not an average.

2 JUDGE MARGULIES: I will permit you to ask that  
3 question in terms of total evacuation time for all people.

4 MR. GUILD: No, sir, I don't want to know that  
5 because I submit to you, sir, that the witness has already  
6 got that answer in his mind, and I am trying to impeach the  
7 witness' testimony.

8 JUDGE MARGULIES: "All people" is the last person.

9 MR. GUILD: That is correct.

10 JUDGE MARGULIES: Isn't that what you are trying  
11 to accomplish?

12 MR. GUILD: Yes, Judge. I don't expect you are  
13 really helping me trying to accomplish that, your Honor.

14 What I would like to try to do is ask the questions  
15 my way. Because I submit to you sir, that it doesn't add up.

16 JUDGE LAZO: There seems to be some misunderstanding  
17 here. Mr. Oliphant is talking about average time and it is  
18 clear that you are interested in the last person out.

19 MR. GUILD: That is correct, your Honor.

20 JUDGE LAZO: So, I think if Mr. Oliphant understands  
21 that, he will be in a better position to tell us.

22 MR. GUILD: That is what I am trying to get at,  
23 Mr. Lazo. I think the point is not clear.

24 BY MR. GUILD:

25 Q I'm interested in the last person out. That last

ml2

1 person is not an average person, Mr. Oliphant. He is the  
2 one we are trying to keep from getting irradiated.

3 All right, sir. That was studied. Do you under-  
4 stand that?

5 A Yes, sir.

6 Q That is what Mr. Kulash and Mr. Lutes and the  
7 PRC Voorhees people studied, the last person out, correct?

8 A That's correct.

9 Q Now if you are adding a half an hour because  
10 you created a more inaccessible locale with your addition  
11 of the Smurf Island facility, doesn't it take those people an  
12 additional half an hour to get out, sir?

13 A No, sir. All that is figured into the timespan  
14 of two and a half to three hours.

15 Q Yes, sir. Your original estimate was two and a  
16 half hours, and now you have added a half an hour, correct?

17 A I'm saying between two and a half to three hours  
18 with moving, with an early evacuation.

19 Q Yes, sir.

20 We are at three hours now, right?

21 A Two and a half to three hours.

22 Q The two, three hours, means somebody might take  
23 three hours to get out, Mr. Oliphant, and that is the some-  
24 body we are concerned about. The last person out, sir,  
25 three hours. Correct?

mml3

1           A        I'm saying betwen two and a half to three hours  
2 time that it will take to evacuate the total park. It is  
3 possible that we could do it sooner.

4           Q        I'm sure it is, sir. And it also is possible that  
5 you might have that person, and it might take considerably  
6 longer than that.

7                    What I am interested in, sir, is some degree of  
8 precision about how you expect to get that last person out  
9 in a given point in time.

10           Q        You are telling me, sir, that it is going to take  
11 as long as three hours, correct?

12           A        That's correct.

13           Q        Let's stick with three hours. How about that?  
14 Because that is the last person.

15           A        I will stick with my original estimate of two and  
16 a half to three hours.

17                    I have answered this question over and over. I  
18 do not understand what you want from me.

19           Q        I just want a true and accurate complete answer to  
20 my question.

21           A        Sir, I am telling you the truth. I do not sit up  
22 here to argue with anyone. I came here as a neutral party.  
23 And Carowinds is a neutral part. And I am telling you, in  
24 our best estimate of time that it will take two and a half to  
25 three hours to evacuate the park.

mml4

1 MR. JOHNSON: Judge Margulies, I really don't think  
2 we are being fair to this witness. The fact that he was able  
3 to answer this question ten times and still be nice about it  
4 doesn't mean that he isn't badgering the witness.

5 MR. GUILD: I will do my best to move on,  
6 Mr. Chairman.

7 JUDGE MARGULIES: The witness says he doesn't want  
8 to argue with you, and what it has come down to is an argument.

9 Let's move on.

10 MR. GUILD: I will do my bst to move on,  
11 Mr. Chairman. I will submit the answer has not been responsive,  
12 but I will do my best to move on.

13 BY MR. GUILD:

14 Q Now you have got people at this campground and  
15 you don't know whether they have studied the movement of the  
16 people at the campground or not, do you?

17 A That's right, I do not.

18 Q You don't know whether that is included in here?

19 A I do not.

20 Q But you do agree it will take them longer than  
21 someone who simply has to go from the park, get in the car  
22 and drive away?

23 A Yes, sir.

24 Q And your estimate, that increment was a half an  
25 hour?

mml5

1           A       Yes, somewhere in that neighborhood. It all  
2 depends on how many people from the campgrounds are in the  
3 park at that time, or how many people are checked into the  
4 campgrounds.

5           Q       All right, sir.

6                    Have you ever evacuated all the people in the camp  
7 at one time?

8           A       No, sir.

9           Q       Have you ever evacuated all the park at one time?.

10          A       Not all the park, no, sir.

11          Q       Now, do you understand, Mr. Oliphant, that the  
12 Voorhees people took your estimates of how much time it would  
13 take to clear the park and they had your estimate of how much  
14 time it would take to clear the parking lot.

15                    But then, as you stated, you are responsible for  
16 getting people out of the park. They, then, took responsibility  
17 for figuring out how to clear the parking lot?

18          A       Not the parking lot, but to have the traffic move  
19 smoothly along Carowinds Boulevard or I-77.

20                    As long as the people are on our property, they  
21 are our responsibility.

22          Q       So you will be responsible for traffic control on  
23 your property?

24          A       Inside the lot along with the help of outside  
25 law enforcement agency.

mm16

1 Q One way or the other, you expect to have the law  
2 officers there to do it with you?

3 A I do.

4 Q So you are not going to do it all by yourself?

5 A No, sir.

6 Q So you are going to rely on outside help to clear  
7 the lot?

8 A Yes, sir.

9 Q As well as clear the roads outside the park  
10 in order to get people out of harm's way?

11 A Yes, sir.

12 Q And your people won't have any role outside the  
13 parking lot?

14 A Not on the state highways, no, sir.

15 Q Anyplace else?

16 A Not outside of the park perimeter, no.

17 Q Is there anything significant between the parking  
18 lot and the park perimeter that I should know about where  
19 your people do have a role in traffic control?

20 A No, sir, not to my knowledge.

21 Q How many law enforcement officers does your plan  
22 for evacuating Carowinds require in order to effect the  
23 evacuation in the times that you estimate it will take?

24 A I don't have those figures with me. But, I think  
25 from North Carolina, from Mecklenburg County, approximately 4;

mml7

1 from South Carolina Highway Patrol, probably the same number  
2 or maybe a little bit more; and also we have requested help  
3 from York County Service Department to help with the actual  
4 sweep from inside the park.

5 Q What does that mean, sir, the sweep inside the  
6 park?

7 A That is what our term is used for when we are  
8 closing. We call it a sweep. To move the people out towards  
9 the exits.

10 Q All right.

11 And how do you normally accomplish that?

12 A We divide two teams up on each side of the park.  
13 We have two gates that are normally open on anything above  
14 a 7000 day. We divide the teams up and sweep the people  
15 towards the exit that way.

16 Q And how long does that take?

17 A Depending on the crowd. We, of course, never rush  
18 anyone out of the park. We keep them in just as long as we  
19 can for revenue purposes. And, if they are in a queue  
20 line to ride a ride, then our officers stop at that location  
21 and let the queue line finish out before we move the people out.

22 Now that is on a regular close.

23 In the case of an emergency, of course, it would  
24 be done differently.

25 Q How long does it normally take -- that is my

mm18

1 question?

2 A Probably an hour. An hour and fifteen minutes.

3 Q All right, sir.

4 Can you give me the total area of the park? Do  
5 you know offhand?

6 A Somewhere in the vicinity of 73 acres.

7 That is total, now.

8 Q All right.

9 And, how about the dimensions generally, roughly,  
10 an approximation. What is the -- if it is a square, what --

11 A We go into almost a circular position inside of  
12 the park.

13 Q What is the diameter then, approximately?

14 A I'd say probably half a mile, if that.

15 Q And are there -- is the park organized with  
16 radial routes from the center of the park out, or are there --  
17 is there a more general way -- can you generally describe the  
18 configuration of routes in the park?

19 How do people move from one part of the park to  
20 the other?

21 A They walk. It is in a circular position. And I  
22 really don't understand what the whole gist of the --

23 Q I'm trying to understand what the pathways, the  
24 roads or means of travel within the park look like.

25 We know what highways look like, you know, getting



mm19

1 from point A to point B. What I am trying to understand, I  
2 gather people walk primarily in the park?

3 A That's correct.

4 Q All right.

5 Now, if I looked at the park from the air, would  
6 it be a grid like a city block with streets intersecting at  
7 right angles?

8 A No, sir. It would not.

9 Q What would it look like?

10 A It would just be one large circular, round --  
11 that's it.

12 Q Now, how does one get from one side of the park  
13 to the other. What would be the most direct routes to get  
14 from one side to the other?

15 Are there roads connecting each edge of the park  
16 with the opposite edge?

17 A No, sir. Everything is within that one circle.  
18 And you have smaller pathways to get to an attraction. You  
19 have a pathway that will cut off to different attractions.

20 But doing that main circular, you can gain  
21 entrance to any part of the park.

22 Q All right. What I am trying to understand is this,  
23 and perhaps we are just not communicating.

24 You have got a circular park.

25 A Right.

mm20

1 Q And if I am on the extreme edge of the park and I  
2 am trying to get to an exit that is on the opposite extreme  
3 edge of the park. It is like a circle, correct?

4 A We only have two exits. One at the front, and one  
5 at the back.

6 Q Well, let's just assume that I am at the extreme  
7 opposite side of the park from an exit that I have gone an  
8 exit from. Now, are there pathways, roads, walks or what  
9 have you that would connect the point where I am to that exit,  
10 directly?

11 A It is all within that circular diameter.

12 Q I am sure it is. But, would it be a direct  
13 straight line path, or would I walk in a regular pathway, or  
14 would the pathway be circular?

15 What would it look like, sir?

16 A It would be a circle.

17 Q I'd go around the circumference of the circle to  
18 get to the other side?

19 A Yes, sir, depending on what location you would  
20 like to get to.

21 Q All right.

22 Now, where is the main parking lot in respect to  
23 the park? Give me just directions of a compass about it, and  
24 that will help me understand.

25 A When you enter from Carowinds Boulevard, you will

21

1 come up the Avenue of the Carolinas. Go through what we  
2 call our Toll Plaza, which is in front of the park. And  
3 that will lead you into the regular car lot, into the  
4 parking lot.

5 Q All right, sir. Let's see if we can make this  
6 a little simpler. I am going to show you Exhibit 27 in  
7 evidence. This is an aerial photograph of the park.

8 (Showing document to witness)

9 Now, would you indicate to us first -- I am looking  
10 at the first photograph.

11 MR. GUILD: Judge, I only have one of these, but  
12 I have got an aerial photograph. There are several of them.  
13 I am looking at the first one of three, and I will try to  
14 describe it for the record.

15 BY MR. GUILD:

16 Q That is a view of the park, to the best of your  
17 knowledge?

18 A Yes, it is.

19 Q All right, sir.

20 I see a roadway that is running roughly up and down  
21 the page on the right-hand side. Is that I-77?

22 A Yes, sir, right there.

23 Q Is that Carowinds Boulevard running roughly left  
24 to right diagonally on the bottom?

25 A Yes, it is.

mm22

1

Q And the park is between the intersection of  
Carowinds Boulevard and I-77?

2

3

A That's correct.

4

Q All right.

5

6

And I am looking in the corner of the park that is  
more or less towards the intersection of Carowinds Boulevard  
and I-77. And I see a grid-like area. Is that the main  
parking lot?

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A That's correct.

end T17

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1 Q Now, where in relation to the parking lot is the  
2 entrance from the park itself into the parking lot that  
3 the walking pedestrian traffic would use to get into the  
4 parking lot?

5 A Approximately right in here is our back gate  
6 (indicating).

7 Q I'm going to put an X on this. Is that approximately  
8 where it would be?

9 A Right.

10 Q That is your back gate. And that is in the southern  
11 tip of the park, itself, correct?

12 A Right.

13 Q Now where is the other --

14 A It's in this area up here (indicating). I don't  
15 know if I can even make heads or tails out of it.

16 Q You might be interested in knowing this is the  
17 aerial photograph that the traffic planners used to plan the  
18 evacuation of your park.

19 A Here (indicating) is a roadway that is spread out  
20 around here. They make a sharp turn and then turn back into  
21 the toll plaza. The people are parked here and then they  
22 walk either to the back gate or the front gate, wherever they  
23 are parked that day.

24 Q Start with the front gate, show me where that would be.

25 A Somewhere in this area up here (indicating).

1 Q Why don't you indicate with an X as best you can?  
2 (Witness marking document.)

3 Q Now, you have indicated a back gate that is in  
4 the lower point of the park, southerly point, and roughly  
5 in the north between the north and the northeast point of  
6 the park is the main gate.

7 A Correct.

8 Q And I think you were describing a moment ago  
9 how vehicular traffic gets into the park. Am I paraphrasing  
10 you correctly to say that if you're coming down I-77 you  
11 turn onto Carowinds Boulevard, you turn into an entrance  
12 road -- is that on park property?

13 A This is -- we don't own this roadway.

14 Q What's the name of that road?

15 A AVenue of the Carolinas.

16 Q And that, on the aerial photograph, is a north-  
17 south route, parallel almost to I-77, correct?

18 A Correct.

19 Q And you run all the way up to what looks like the  
20 top of the park property and you make a sharp turn?

21 A Yes, sir. It routes back through. Something like  
22 that (indicating). Yes, sir.

23 Q And that is a 180° turn?

24 A Yes, sir.

25 Q And it doubles back on itself and enters the

1 parking lot.

2 A Correct.

3 Q And that's not only the route that traffic must  
4 take into the park, but that's the way you empty the parking  
5 lot; correct?

6 A The exit for the parking lot is down at this end  
7 (indicating)

8 Q Can you show me where that exit would be?

9 A It would be right here in this opening here.

10 Q All right. So there's an exit from the parking lot  
11 in the extreme southern point in the park. correct?

12 A That's correct.

13 Q And doesn't your plan also call for using the  
14 entrance route as an evacuation route as well?

15 A It does.

16 Q And that would take some of the traffic through  
17 this 180° turn.

18 A Right. Also, there's a back gate back here that  
19 could be opened to move people out.

20 Q And indicate where that would be.

21 A It's somewhere in this vicinity here (indicating).

22 Q The extreme western point of the park?

23 A Yes, sir.

24 Q All right, sir. Would you agree with me,  
25 Mr. Oliphant, that the plan for evacuating Carowinds calls

1 calls for not only using your main exit and your entrance  
2 as egress routes or egress points from the park, but also,  
3 the third gate that you indicated that's to the west?

4 A Depending on the size of the crowd it could be  
5 possible to have to use all of them.

6 Q And if you used those exit points, some of the  
7 flow of traffic would go northwest on Carowinds Boulevard  
8 to North Carolina 49 and then north on Highway 49?

9 A That's correct.

10 Q And some of the traffic would go southeast on  
11 Carowinds Boulevard onto I-77 going northbound.

12 A That's correct.

13 Q And some of it would go southeast on Carowinds  
14 Boulevard across I-77, on to South Carolina 51, and then east  
15 to 521 near Pineville, correct?

16 A That's correct.

17 Q So you have traffic leaving the park in virtually  
18 opposite directions, correct?

19 A Correct.

20 Q Now, what would happen if the plume of radiation  
21 from the facility was projected to be tracking either just to  
22 the east of the park or just to the west of the park such  
23 that you wouldn't be able to use I-77 northbound, 521 north-  
24 bound as an exit route, or in the other case, South  
25 Carolina 49 northbound as an exit route. What plan would



1 you have then, sir?

2 A That is not my plan. That would be the State  
3 Highway Patrol's responsibility for that. I could not tell  
4 them which route to use. I don't have that authority.

5 Q I understand that, sir, but do you know what  
6 would happen to your evacuation plan?

7 A No, sir.

8 Q Do you know which way the prevailing wind is from  
9 the Catawba facility, and therefore, which is the most likely  
10 direction that a wind-borne plume of radiation would travel?

11 MR. MC GARRY: Objection. Relevancy grounds. This man  
12 is responsible for evacuating people from the park. He is  
13 not knowledgeable in meteorological questions.

14 MR. GUILD: Well, I submit that he should know, and  
15 it bears on the efficacy of his evacuation plan, Mr. Chairman.

16 JUDGE MARGULIES: I'll let him answer if he knows.

17 BY MR. GUILD:

18 Q Do you know?

19 A No, sir, I don't know.

20 Q Well, I ask you to accept -- and submit that the  
21 record reflects -- that the prevailing wind blows virtually  
22 directly from the facility to your park; that over a third of  
23 the time it blows from the southwest toward the northeast,  
24 and you are in the northeasterly direction from Lake Wiley  
25 and the facility, are you not?

1           A     That's correct.

2           Q     Do you have a plan in the event that -- understanding  
3 that you're not responsible for moving people once they leave  
4 the park, do you have any contingency plans for using  
5 particular exits depending upon the direction of the plume?

6           MR. MC GARRY: Excuse me, a point of clarification.  
7 Counsel's question was premised upon the fact that the wind  
8 blows 33 percent of the time in the direction of Carowinds  
9 and that is incorrect. Carowinds is one of the three  
10 sectors --

11          MR. GUILD: I didn't say that, Mr. Chairman. I  
12 said 33 percent of the time from the southwest to the  
13 northeast.

14          MR. MC GARRY: I don't want the witness to presume  
15 that we're getting into meteorological questions, that it  
16 blows 33 percent of the time over Carowinds.

17          MR. GUILD: If you take the three quadrants from  
18 the southwest, including one quadrant --

19          MR. MC GARRY: The point is, counsel, Carowinds  
20 is not in all three quadrants; it's in one of the quadrants.  
21 And they're referred to as sectors.

22          MR. GUILD: Yes, sir. Well, I don't mean to  
23 belabor the point, but you've got to move people out of the  
24 park in two routes, and those routes go east and go west,  
25 and I submit to you, sir, that radiation will be blown

1 approximately a third of the time in the direction of your  
2 park.

3 MR. MC GARRY: Again, Your Honor, I think that's  
4 a mischaracterization of the record. It does not blow  
5 towards Carowinds a third of the time.

6 MR. GUILD: It blows towards Carowinds and the  
7 exit routes that he has indicated at least one-third of  
8 the time.

9 MR. MC GARRY: That is incorrect.

10 JUDGE MARGULIES: The record will speak for itself.

11 MR. GUILD: I should hope it would, Mr. Chairman.

12 BY MR. GUILD:

13 Q All right, sir. Do you -- my premise is, sir, that  
14 the wind prevails in the direction of your park. Now, it  
15 may blow to the easterly part or to the westerly part, but  
16 it's likely, given its prevailing character, to blow in the  
17 general direction of your park.

18 Do you have any contingency plans to use different  
19 exit routes, depending upon the direction of the wind-borne  
20 radioactive plume?

21 A At this time, no, sir, we do not.

22 Q All right, sir. Now, I think you just also stated  
23 that if you have plans for using different routes once they  
24 get off the park property you are unaware of them, and that's  
25 beyond your responsibility, correct?

1           A     That's correct.

2           Q     Do you have any plans to -- do you know what you  
3 would do, Mr. Oliphant, if you received word from the facility  
4 that there was imminent release of radiation in serious enough  
5 amounts to potentially cause death and health effects, and  
6 that given meteorology, the radiation plume would reach your  
7 park before you could complete an effective evacuation?

8                     I thought I left you with a question.

9           A     What was the question?

10          Q     What do you do? Do you have a plan to address that  
11 contingency, sir?

12                     MR. MC GARRY: I'm sorry, I just didn't hear the  
13 question because of the lawnmower. Could you repeat it again?

14                     BY MR. GUILD:

15          Q     I'll try. What do you do, Mr. Oliphant? Do you  
16 have a plan to address what response you would take at  
17 Carowinds Theme Park if you received notice that there was an  
18 imminent release of radiation that was to be borne by the  
19 likely wind directly to your park, and that it would arrive  
20 there, given the wind speed, before you would be able to  
21 accomplish effectively an evacuation of the park of the people  
22 in attendance?

23          A     How many people are we talking of inside the park?  
24 I mean, we don't have housing to accomodate 26,000 people,  
25 if that's what your question is.

1 Q Well, how much housing do you have? And do you have  
2 a plan to use that housing in some fashion?

3 A No, sir. All we would do is I would' elect just  
4 to try to evacuate the park totally.

5 Q You'd try to evacuate the park?

6 A Yes. We don't have the housing to put that many  
7 people under cover.

8 Q Well, would you try to put as many under cover as  
9 you could?

10 A It's a possibility, yes, sir.

11 Q Well, it may be a possibility, but do you have  
12 a plan for it?

13 A No, sir.

14 Q So you would plan to try to evacuate or tell people  
15 to leave even if you knew in advance that they would not be  
16 able to effectively evacuate the park and they would be  
17 exposed to radiation while you were trying to evacuate?

18 A No, we don't have facilities to house the people.

19 Q Yes, sir, but you can save some people by telling  
20 them to go indoors and sheltering them. I submit to you  
21 that sheltering indoors reduces dosage in the event of  
22 exposure to a radioactive plume. And it's part of even  
23 Duke's plan to advise sheltering for the general populace.

24 Now what I'm asking you, sir, is does your plan  
25 include the contingency of attempting to shelter as many

syl0

1 people as possible? I think you said it doesn't, correct?

2 A That's correct. That's why we have elected to  
3 move on the early call.

4 Q Have you discussed with any of the planners the  
5 consideration of calling for sheltering of as many people  
6 as you can?

7 A Inside the park?

8 Q Yes, sir.

9 A Not to my knowledge, we haven't.

10 Q Duke Power has not suggested that to you?

11 A I don't recall it.

12 Q How many people can you effectively shelter -- I  
13 will use that word -- in an enclosed facility? By that I  
14 mean enclosed like a building would be enclosed, walls and  
15 roof and reasonably air-tight windows and doors?

16 A Probably approximately three to four thousand.

17 Q All right, sir. What kind of training have you  
18 performed for the Carowinds employees on radiological  
19 emergency response?

20 A None at this time. This will be performed by  
21 Wayne Broome and myself.

22 Q What training will you perform?

23 A That's left up to Mr. Broome.

24 Q Has Mr. Broome told you of any training that he  
25 will perform?

1           A     Just that he would assist us on any matter on a  
2 written proposal to have a ready plan.

3           Q     Are your employees tasked with any specific  
4 responsibilities in the event of a radiation release at  
5 Catawba?

6           A     Some will be. Mostly management people.

7           Q     Are they aware of those responsibilities?

8           A     Yes, sir.

9           Q     How have they been made aware of them?

10          A     We have been getting some briefings regarding this,  
11 but nothing concrete until we get with Mr. Broome.

12          Q     Who gave you those briefings?

13          A     I'm talking about any type of emergency that they  
14 are aware of. They always assist when we have to do an  
15 evacuation of any part of the park.

16          Q     Has anybody received any briefings so far on  
17 radiological emergency response?

18          A     It's possible my assistant did at one time. I'm  
19 not sure.

20          Q     One person?

21          A     Yes.

22          Q     Anybody else that would be responsible at the park  
23 that you're aware of?

24          A     Not to my knowledge.

25          Q     Is any information given to park visitors, customers,

1 as to the existence of the hazard posed by a possible accident  
2 at the Catawba facility?

3 A Not at this time, no, sir.

4 Q Do you have any plan to do that?

5 A I couldn't answer that.

6 Q What information do you have on that subject?

7 A None.

8 Q Have you thought about it?

9 A Yes, sir, I have.

10 Q Have you talked to anybody about it?

11 A No, sir.

12 Q Well, what have you considered doing?

13 A I have considered pamphlets and mostly the pre-  
14 recorded message that would be played in the event that we  
15 would have to evacuate.

16 Q Have you composed such a message?

17 A I've looked over some copies that were given to me  
18 by Mr. Broome.

19 Q And were those messages specifically for the  
20 Carowinds use?

21 A It looked like a standard broadcast message --

22 Q As far as you know they were standard pattern  
23 Emergency Broadcast System messages that Mr. Broome might  
24 use for all of his people?

25 A Yes.



1 Q Do you distribute any Duke Power Company/Catawba  
2 emergency plan brochures to your visitors?

3 A No, sir.

4 Q Why not?

5 A No one has offered any.

6 Q Would you be willing to distribute them to your  
7 visitors?

8 A That would be left up to the discretion of the  
9 general manager.

10 Q Have you discussed the matter with him?

11 A No, sir.

12 Q Well, sir, are you aware that Duke has an obligation  
13 to make those pamphlets available to not only persons who  
14 reside and work in the emergency planning zone, but persons  
15 who are transients, using such recreational facilities as  
16 the Carowinds Theme Park?

17 MR. MC GARRY: Objection. Relevancy of the brochure  
18 issue with respect to this witness's testimony. I believe  
19 this witness was called on Contention 9, Contention 14 and  
20 Contention 15 only, and those don't involve the brochure,  
21 so it's beyond the scope of the purpose in calling this  
22 witness.

23 MR. GUILD: It isn't, Mr. Chairman. We're trying  
24 to establish whether or not there have been any prior  
25 training, information, instructions, guidance to people who

1 must implement his evacuation plan, and we have established  
2 that the park employees have not been so trained. And now I  
3 want to understand whether or not that has significance,  
4 enhanced significance, given the distribution or non-  
5 distribution of information to those who are transient and  
6 utilizing the park facilities. Information regarding the  
7 planned evacuation routes, shelters, what they would be  
8 expected to do in the event that Mr. Oliphant's people asked  
9 them to evacuate.

10 JUDGE MARGULIES: Which contention does that  
11 relate to?

end 18

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#19-1

1 MR. GUILD: It relates clearly to the contentions  
2 that have to do with evacuation of special facilities, namely  
3 his park. The brochure, I submit, is relied on extensively  
4 as the basis for informing people about how they are to  
5 evacuate and the nature of the hazard. That is contention  
6 nine and 15.

7 MR. McGARRY: Your Honor, let me just make one  
8 thing clear for the record. Looking at the subpoena request  
9 concerning Mr. Oliphant, number 16, the intervenors seek to  
10 prove through Mr. Oliphant's testimony that as alleged  
11 protective action cannot be taken in a radiological emergency  
12 and here is the thrust of their request where applicants have  
13 seriously underestimated the time required to evacuate the  
14 public. That is what Mr. Oliphant is being called to  
15 testify about, about the evacuation time of the public and not  
16 about the brochure.

17 MR. GUILD: I don't want to talk to him about the  
18 brochure's content. I want to understand whether or not he  
19 is aware that applicants have an obligation to distribute the  
20 brochure to transients including persons who are utilizing  
21 his park's facility which I submit are included within the  
22 definition of a transient population within the plume EPZ.

23 MR. JOHNSON: The staff would just observe that  
24 the foundation has not been laid for that assumption and it  
25 is the staff's belief that it is inaccurate.

19-2

1 (Board conferring.)

2 JUDGE MARGULIES: My recollection of the record,  
3 Mr. Guild, was that applicant testified about putting up  
4 signs for transients at Lake Wylie. I don't recall testimony  
5 on distributing pamphlets to transients in general.

6 MR. GUILD: I don't recall it either, Mr. Chairman,  
7 but I don't think that solves the problem or answers the  
8 objection. The fact of the matter is that there is projected to  
9 be at a peak some 36,000 persons at the Carowinds theme park,  
10 26,000 at a maximum single point in time according to the most  
11 recent testimony of Mr. Oliphant. I submit to you that many  
12 of those persons will have no idea that they are in the plume  
13 exposure pathway EPZ. Many of those persons are not resident  
14 or employed in the plume EPZ and will have never received the  
15 brochure before. They will be at the Carowinds theme park  
16 and they will have no idea whatsoever what to do in the event  
17 that there is a call for an advisory, recommended evacuation,  
18 precautionary shutdown or what have you.

19 They will have no idea what routes they are supposed  
20 to take. They will have no idea what shelters they are supposed  
21 to go to. They will have no idea of the nature of the hazard.  
22 It seems to me that however you cut this piece of cake, it is  
23 relevant for this witness to respond to the question that is  
24 pending.

25 MR. MCGARRY: Your Honor, we have a broken record.

19-3

1 In the initial contention that is precisely the point that was  
2 raised. I quote item "B," "In the event of an emergency  
3 citizens uncertain as to how to respond would likely not know  
4 who to contact for clarification and instruction." Just  
5 above that is the paragraph, "Finally, the inadequacies of  
6 public information both in terms of content and distribution  
7 make it likely that many residents will not hear the sirens."  
8 Two points that counsel has been arguing were ruled out by the  
9 Board when they admitted contention nine.

10 MR. GUILD: You can't cut this cake as narrowly  
11 even as Mr. McGarry would like to cut it. Mr. Chairman, you  
12 have to get these people out of Carowinds. That is the bottom  
13 line. I submit to you that there is probably some very good  
14 commercial reasons for not telling people that they are in a  
15 plume EPZ. There is probably some very good public relations  
16 reasons for Duke Power putting up a totally nonsensical and  
17 illogical sticker that says you are in an emergency zone  
18 without regard to what the hazard is that the zone is planned  
19 for. But you can't allow a record to be deficient in this  
20 regard where you have a man who says he has a plan that will  
21 work and yet he will not tackle the question of whether or not  
22 he should inform his customers that they are exposed to this  
23 hazard, sir.

24 JUDGE MARGULIES: He is here to testify about the  
25 plan and I will permit you to ask the question as to whether

1 it is a part of the plan for evacuation, the overall plan for  
2 evacuation to also provide the users of the facility with  
3 copies of the brochure.

4 MR. GUILD: Let me say a foundation.

5 BY MR. GUILD: (Resuming)

6 Q You have people visit your park, Mr. Oliphant,  
7 who don't reside within 10 miles of the Catawba Station or  
8 Lake Wylie? People travel from some distance to visit your  
9 park, don't they?

10 A That is correct.

11 Q I will submit to you that I have there and came up  
12 from Columbia, drove 100 miles to get there. You have people  
13 from a distance that come to your park, correct?

14 A That is correct.

15 Q Do you have any basis for knowing whether or not  
16 the people who visit your park have any knowledge or information  
17 as to the proximity of the Catawaba station?

18 A No, sir. I do not.

19 Q Do you have any knowledge as to whether or not  
20 the people who visit your park are informed as to how they would  
21 be notified in the event of a radiological emergency at the  
22 Catawba Station?

23 A That has been discussed through Mr. Broome and myself.  
24 If the worst possible situation arises, then they would be  
25 told that there is a problem at the Catawba plan.

1 Q They would be told when the accident happens, right?

2 A That is correct.

3 Q They wouldn't be told before, would they?

4 A No.

5 Q Do you have any reason to believe that people know  
6 without your telling them that they are potentially exposed  
7 to this hazard?

8 A No.

9 Q Do you have any basis for knowing whether or not  
10 people know what routes they be required to take in order to  
11 efficiently evacuate the Carowinds facility in the event of  
12 an accident at the Catawba station?

13 A No, sir. I do not.

14 JUDGE MARGULIES: You are going beyond my ruling.  
15 My ruling was that I would permit a line of questioning as  
16 to whether the present plan calls for the distribution of  
17 those brochures.

18 MR. GUILD: Are you sua sponte ruling that my  
19 question is objectionable?

20 JUDGE MARGULIES: Yes, I am because your past three  
21 questions have completely ignored my ruling.

22 MR. GUILD: Sir, I was trying to lay a foundation  
23 to ask the question which I submit if asked the way the Chair  
24 posed it answers itself and accomplishes nothing and certainly  
25 does not aid me in my attempt to examine this witness. Are you

19-6

1 telling me I can't ask the question that I posed?

2 JUDGE MARGULIES: If you eventually get to it, you  
3 may but time is running out and we are approaching the time  
4 where you should consider dismissing some of the subpoenaed  
5 witnesses so that they come here tomorrow.

6 MR. GUILD: Mr. Chairman, I would submit to you,  
7 sir, that I am trying to get done with as many of the people  
8 as I possibly can today. I have asked counsel for applicants  
9 whether they would be willing to go late so that we could  
10 complete these people and let them go and if they seem to find  
11 that acceptable and I would like to do that. So I would like  
12 to try to complete the people who are present.

13 JUDGE MARGULIES: It isn't applicant's counsel who  
14 is going to make that decision.

15 MR. GUILD: No, sir. It is you and that is what I  
16 am trying to inform you about and since you just posed the  
17 proposition that I excuse people, I would submit to you, sir,  
18 that it might be more efficient and it would be amenable to other  
19 counsel if you would consider the possibility of extended  
20 proceedings today so that we could complete the people who are  
21 present and I will try to complete Mr. Oliphant among them.

22 JUDGE MARGULIES: You may proceed, counsel.

23 MR. GUILD: I thought you were going to rule or do  
24 something, Judge.

25 JUDGE MARGULIES: It is not our intention to proceed



19-7

1 with any witness beyond five o'clock.

2 MR. GUILD: Well, sir, if that is your decision then  
3 perhaps we should excuse a good number of people because I  
4 would have hoped that we could have gone beyond five o'clock  
5 and completed these people who are waiting. But if that is  
6 your ruling, then can we take a break and I will do just as  
7 you earlier suggested.

8 JUDGE MARGULIES: We will take a ten-minute break.

9 (Whereupon, a short recess was held.)

10 JUDGE MARGULIES: Back on the record.

11 MR. GUILD: As I recall there was a pending objection  
12 at the point where we got into the colloquy about the  
13 availability of witnesses, Judge.

14 JUDGE MARGULIES: You were going down the line with  
15 your questioning to arrive at the point according to my  
16 recollection of what the plan covers, whether the plan covers  
17 the distribution of the brochures.

18 MR. GUILD: Yes, sir.

19 BY MR. GUILD: (Resuming)

20 Q Mr. Oliphant, are you aware of an obligation on the  
21 part of applicants and state and local officials to provide  
22 educational information to transient members of the EPZ  
23 population with respect to the emergency plan for the Catawba  
24 facility?

25 A I have heard of that, yes, sir.

19-8

1           Q     In so understanding, are you going to include in your  
2 plan any such information for the people who are using the  
3 facilities of Carowinds?

4           A     That has yet to be decided.

end#19

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1 Q As of now, no such information has been provided,  
2 correct?

3 A Not to the people, no, sir.  
4 The plant is not online yet.

5 Q But you are aware, for example, brochures have been  
6 mailed to the resident population with the EPZ?

7 A By the testimony given today I am.

8 Q Now you stated that in the parking lots, in order  
9 to effect the evacuation, that your people, Carowinds' employees  
10 would rely on the efforts also of the local law enforcement  
11 people, correct?

12 A That's correct.

13 Q Who would be in charge of the traffic control  
14 functions that I think your testimony stated would involve  
15 Carowinds employees, South Carolina Highway Patrol,  
16 Mecklenburg County Law Enforcement, and the York County  
17 Sheriff's Department?

18 A Are you talking on the roadway, sir?

19 Q Let's start with your parking lots.

20 A We would have control in our parking lots. Once  
21 it enters the main exit, that would be the South Carolina  
22 Highway Patrol would have the largest majority of responsi-  
23 bility on moving the people out of that area.

24 Q All right, sir.

25 How about the role of the York County Sheriff's

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1 Department?

2 A They were going to assist us inside the park  
3 itself, and inside the lot.

4 Q And who would be in charge there?

5 A The Sheriff would be, of those gentlemen.

6 Everything would be laid out in the plan that  
7 would be formed before the plant comes online.

8 Q You are going to have a plan that doesn't exist  
9 yet that is going to specify this?

10 A Hopefully, yes, sir. That was the whole conten-  
11 tion. I think I explained that to you earlier on in the  
12 testimony.

13 Q I may have missed it, because there is a document  
14 in evidence that has been marked as Intervenors' Emergency  
15 Planning Exhibit 39 that is described as the Carowinds  
16 Emergency Plan.

17 A Yes, sir. That is set up for any evacuation that  
18 may be deemed necessary at the park. That covers fire,  
19 weather, ride accident, whatever. An evacuation is an  
20 evacuation.

21 Q But it doesn't cover nuclear accidents at the  
22 Catawba facility, does it?

23 A No, sir. That is by another plan that will  
24 be developed that will cover all the aspects of this.

25 Q Where is that plan now?

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1           A       Most of it is in my head and Mr. Broome's head, I  
2 imagine, because the plant is not online yet.

3           Q       Yes, sir, but that is why we are having these  
4 hearings to determine whether or not adequate plans exist  
5 to protect the public health and safety such that the plant  
6 should be allowed to go online.

7                    That is why you are here, Mr. Oliphant, to tell  
8 us about the adequacy of emergency planning for Carowinds.

9           A       We have the emergency plan in your hand that would  
10 cover anything, and it would include -- if you want to get  
11 technical about it, it would include the Catawba.

12          Q       Does it say anything about radiological  
13 emergencies in this plan?

14          A       No, sir.

15          Q       Does it say the word "Catawba Nuclear Plant" in  
16 this plan?

17          A       No, sir. It is Carowinds' Emergency Plan and  
18 Evacuation Plan.

19          Q       Does it say anything about the York County Sheriff's  
20 Department's responsibilities in closing down or evacuating  
21 the park in this plan?

22          A       No, sir, not that plan. No, sir.

23          Q       But you say -- is it your judgment that this plan  
24 is adequate to provide for effective emergency response in  
25 the event of a serious accident at Catawba?

mm4 1 A For evacuation of the park, yes, sir.

2 Q Then why are you making another plan?

3 A To put everything in perspective on everyone's  
4 durties, to make it clearer.

5 Q But you don't need to make any of those changes in  
6 order to have the existing plan work just fine, in your opinion?

7 A Yes, sir. It would work.

8 Q Just fine?

9 A Yes, sir. In my estimate it would. It would not  
10 be in my emergency manual if I did not think it would work.

11 Q Then why make another plan? I am losing you  
12 there.

13 A All we would do is add to that plan on  
14 responsibilities of different agencies involved. That's all.

15 Q Okay. Well that's good to know. So, you are  
16 not going to add very much, and your existing plan is okay  
17 as far as you know?

18 A As I have said for the fourth time, yes.

19 Q All right, sir.

20 Now, why didn't you revise the plan to include  
21 specifically response to an accident at Catawba prior to  
22 opening on March 18, 1984 as your people's letter of  
23 December 27, 1983 to the Duke Catawba Staff commenced --  
24 that is the same exhibit number, Exhibit 39 --

25 (Document handed to witness.)

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1                   That's what that letter from your secretary to  
2 the plant states?

3           A        In my thinking we reviewed -- we have an emergency  
4 manual consisting of probably 200 pages which is talking about  
5 the plan. But nothing specific to the evacuation. That is  
6 what she means by this document.

7           Q        You revised it before opening?

8           A        We have revised some articles in our emergency  
9 manual, which consists of other items. But our emergency  
10 evacuation plan has not changed, no.

11          Q        And you revised it -- have you revised it in any  
12 way material to accomplishing evacuation of Carowinds in  
13 the event of a radiological emergency such as what we are  
14 talking about in this hearing?

15          A        No, it has not been revised.

16          Q        So then what is the point of saying to  
17 Mr. Hampton at the Catawba Nuclear Station, "To date our  
18 emergency plan has not changed. We will be revising the  
19 plan prior to opening on March 18th, 1984"?

20          A        I have just explained that to you.

21          Q        You lost me, so you have got to try one more time.

22          A        I will try one more time, if you would listen  
23 closely, please.

24                   We have a manual which we call our emergency  
25 manual which covers all aspects of any type of emergency. We

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1 review this every year before we open and we revise what  
2 is necessary in that. That is what we call the plan. It is  
3 not -- she was mistaken to lead you to believe that anything  
4 was going to be changed on the evacuation procedures.

5 Nothing has been changed on the evacuation  
6 procedures. But overall in the plan, there may have been  
7 some changes within a certain section that would not relate  
8 to Catawba.

9 Q Have you transmitted any of those revisions to  
10 Duke Power Company?

11 A No, sir, because they do not relate to the  
12 Catawba plant.

13 Q All right, sir.

14 Were you aware of a meeting that was held with  
15 State and local officials to discuss emergency planning for  
16 Carowinds on February 1st, 1983?

17 A I have attended some of them. I could not say I  
18 remember that particular one.

19 Q Okay. This is Intervenors' Exhibit 40. I show  
20 you that and submit to you it is an agenda of that meeting.

21 Do you recall that meeting?

22 A I attended one in Rock Hill. I cannot say if this  
23 is the one or not.

24 Q All right.

25 So, let me direct your attention to a point that



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1 is raised in this exhibit under a list entitled  
2 "Considerations for Carowinds Theme Park with Reference to  
3 Catawba Nuclear Station."

4 A question is asked: Is Carowinds the only  
5 special facility that is to be considered for precautionary  
6 action?

7 Now, by precautionary action they mean shutdown  
8 at the alert stage before the sirens have sounded and a  
9 general populace evacuation order has been issued?

10 A Right.

11 Q Right. Okay.

12 8. Will an early precautionary evacuation do  
13 more harm than good from the standpoint of local and state  
14 credibility? How do you understand that question?  
15 What does that mean, Mr. Oliphant?

16 A The way I understand it -- could I see that  
17 question again, please?

18 Q Sure, number 8.

19 (Document handed to witness)

20 A We would be taking recommendations from Wayne  
21 Broome of Mecklenburg County Emergency Preparedness and we  
22 would go upon his recommendation. If he thought that we  
23 should evacuate, we would evacuate.

24 And I imagine later on, if it did not happen to  
25 be of a serious nature, then everyone would look unfavorably  
upon that.

end 820

1 Q What about the other effect, Mr. Oliphant? What  
2 about the effect of people seeing everyone leaving Carowinds  
3 or an industrious reporter discovering that the Carowinds  
4 has been taking precautionary evacuation, and the effect of  
5 such informatior on other people deciding to evacuate before  
6 an order was given? Has consideration been given to that  
7 effect?

8 A Yes, sir.

9 Q And what do you think that effect would be?

10 A I could not answer that --

11 MR. MC GARRY: Objection. I was going to object  
12 but the witness said he couldn't answer.

13 BY MR. GUILD:

14 Q How will the media view an evacuation of Carowinds  
15 when no other action is planned for special facilities?  
16 Did you discuss that subject?

17 A No, sir.

18 Q You don't recall meeting and talking about that issue?

19 A On the media?

20 Q Yes. Well, that point, the media, yes.

21 MR. MC GARRY: I will object to that question.  
22 How the media is going to view an evacuation is irrelevant  
23 to this man's testimony.

24 MR. GUILD: Mr. Chairman, it isn't, because if an  
25 effective evacuation of Carowinds is dependent upon doing

1 what the witness says will be done, and that's taking a  
2 precautionary evacuation, and taking that precautionary  
3 evacuation has implications that make that action ill-advised  
4 under certain circumstances, I would submit to you that it  
5 bears on the likely effectiveness of being able to implement  
6 that action properly.

7 JUDGE MARGULIES: I don't understand your point.

8 MR. GUILD: Well, sir, if successful evacuation  
9 of Carowinds depends on getting people out of there before  
10 everybody else is called to evacuate, and yet no one is really  
11 ever going to do that because it would require telling the  
12 media sort of an embarrassing piece of information that  
13 something is serious enough at the Catawba facility that  
14 we're going to shut down Carowinds and move 30,000 people  
15 out of Carowinds as a precautionary measure, I submit to you  
16 that it bears on the likelihood of them ever taking that  
17 action.

18 If, in fact, they don't take a precautionary action  
19 but wait until evacuation is ordered for everybody else, then  
20 we face what I submit will be a wholly different circumstance,  
21 and that is an evacuation of Carowinds that is much less  
22 likely to be effective. Otherwise, why would the planners  
23 raise the issue in their own document, Mr. Chairman, which  
24 is not my question; it's the question raised by the local  
25 emergency planning officials in their meeting with Mr. Oliphant

1 or his people at Carowinds.

2 JUDGE MARGULIES: Now what was your question?

3 MR. GUILD: The question posed to him was, this  
4 appeared on an agenda at a meeting purported to have included  
5 his people, discussing his facility. What does he know  
6 about it, how was it resolved, did he discuss it? What is  
7 the answer to this question? It's obviously a troubling  
8 question. What are its implications for effective evacuation  
9 of Carowinds?

10 JUDGE MARGULIES: You may answer.

11 THE WITNESS: Well, I can tell you in no uncertain  
12 terms that upon recommendation from Wayne Broome, we will  
13 take his recommendation, whatever the media says or whatever  
14 the public say, Carowinds would be evacuated.

15 BY MR. GUILD:

16 Q All right, sir, but you're not going to tell  
17 anybody in advance that they're close enough to a nuclear  
18 plant that they might have to evacuate in the event of an  
19 accident; you'd be perfectly happy to tell people to make  
20 a precautionary evacuation, Mr. Oliphant, but you are not  
21 willing to provide them advance information about the nature  
22 of the hazard at the plant.

23 MR. MC GARRY: Objection. Asked and answered  
24 four times.

25 JUDGE MARGULIES: I'm going to sustain the objection.

1 MR. GUILD: All right, Mr. Chairman, that's all I  
2 have for Mr. Oliphant. Now, I had hoped that we could,  
3 although the clock is advancing towards your appointed hour  
4 of 5:00 o'clock, I hoped we could get Mr. Fincher, who is  
5 the only remaining witness present in the courtroom -- the  
6 rest have been excused -- in and out, given the fact that  
7 he's leaving town tomorrow and was not reached yesterday  
8 only because we adjourned.

9 So I would ask that we stay whatever time is  
10 necessary to finish Mr. Fincher, and he's the only other  
11 witness present.

12 That's all I have.

13 JUDGE MARGULIES: Could we finish up as quickly as  
14 we can with Mr. Oliphant.

15 MR. GUILD: Mr. Oliphant, thank you for your time.

16 JUDGE MARGULIES: Do you have anything?

17 MR. RILEY: Yes, I do, Judge.

18 CROSS EXAMINATION

19 BY MR. RILEY:

20 Q Are you aware that the NRC, in NUREG-0654, considers  
21 some accidents that would go from first indications to actual  
22 release in something like half an hour?

23 A I have been informed of it, yes, sir.

24 Q All right. Now, do you know the distance from  
25 Carowinds to the Catawba plant is about 8 to 9 miles?

1           A     Yes.

2           Q     With a wind speed of, say, five miles an hour,  
3 that means then that plume could, if the wind direction  
4 were that way, be at Carowinds in something like two hours.  
5 Is that right? Two hours from the inception?

6           A     I really can't answer that question.

7           Q     Well, if you simply take a look at wind speed and  
8 direction, the wind is moving 5 miles an hour, it will get  
9 to 9 miles north in two hours.

10           MR. MC GARRY: Your Honor, I'm going to object.  
11 The man is not here to talk about serious accidents or how  
12 long it's going to take to get there. Mr. Riley has those  
13 facts in the record; he can make whatever he wants of them.  
14 This man is here to tell you how long it's going to take to  
15 move people from Carowinds.

16           MR. RILEY: This is foundation, sir. I'm right at  
17 the question.

18           JUDGE MARGULIES: Let's just make the assumption  
19 and not drag him through in terms of his knowledge in those  
20 areas.

21           BY MR. RILEY:

22           Q     All right fine. Let's hypothetically say, then,  
23 the plume will arrive at Carowinds in approximately two hours.  
24 Now, under those conditions, NRC provisions provide for  
25 alerting, in a quick-breaking accident at the general

1 emergency level within about 15 minutes with the siren  
2 operation.

3           Now, if you have received word from Mr. Broome  
4 that there has been a fast-breaking accident, the sirens  
5 are going to go off long before all your people are  
6 evacuated. What preparations have you made for the concern  
7 of the people if they hear the sirens go off while there  
8 are still plenty of people around the park and in the parking  
9 lot?

10           A     WE have taken into consideration what we were  
11 talking about before, between two to three hours to evacuate  
12 the park. That would be on an early move. I do deem it  
13 possible that given that the late warning, if the all-time  
14 catastrophies is happening, that we could possibly move the  
15 people out of the park in a two-hour timeframe.

16           Q     Right. But the question was, has your planning  
17 taken into account what the effect on the people of hearing  
18 the sirens would be? Do you anticipate a panic problem?  
19 Do you anticipate something to allay anxiety, to prevent  
20 overcrowding and that sort of thing?

21           A     That's a total assumption, sir, and I can't answer  
22 that.

23           Q     Have you anticipated any possible conflicts between  
24 your employees and the Sheriff's employees in the matter of  
25 having traffic leave your parking area?

sy7

1           A     No, I do not foresee any problems with the law  
2 enforcement people because we work with them every day of  
3 the week.

4           Q     Would your assumption be that if the Sheriff  
5 indicates something that your people could accomodate what  
6 it is that he wishes?

7           A     We would try, yes, sir.

8           MR. RILEY: That will be all.

9           JUDGE MARGULIES: Staff?

10          MR. JOHNSON: Mr. Chairman, I was asked by  
11 Mr. Wilson if I would cede my priority to him, and he can  
12 go first as far as I'm concerned.

13          MR. WILSON: Thank you.

14          BY MR. WILSON:

15          Q     Earlier this morning, the discussion at one point  
16 turned to the terms "precautionary shutdown" versus an  
17 evacuation of the site. Do you remember that?

18          A     Yes.

19          Q     As far as your efforts to move the public from  
20 the premises go, is there any difference to you what you  
21 call the effort?

22          A     No, sir.

23          Q     As to your expected evacuation, based upon an  
24 alert that might occur at the Catawba Nuclear Station, that  
25 recommendation I believe you said would come from Mr. Broome;



1 is that correct?

2 A That's correct.

3 Q And you would rely upon that recommendation and  
4 follow it, right?

5 A That's correct.

6 Q I believe the testimony earlier indicated that  
7 this was basically because you had no sheltering option;  
8 is that right?

9 A Right.

10 Q That action is the only protective action you  
11 could take for the public, is that right?

12 A That's right.

13 Q Now, in the worst case situation such as Mr. Riley  
14 posited, where the plume is overtaking the premises, the  
15 Carowinds before the population there has been removed, is  
16 it going to increase or reduce exposures to continue an  
17 evacuation or even conduct an evacuation, versus having  
18 everyone stand in place with inadequate shelter?

19 A That's correct.

20 Q Well, is it going to increase or decrease the  
21 exposures, would you expect?

22 A It would not increase it any.

23 Q If I read you correctly, then, it would have the  
24 effect of decreasing the exposures by moving from the path.

25 A That's correct.

sy9

1 Q Are you and your staff continuing to evaluate the  
2 ability of the Carowinds personnel to remove the population  
3 in an expeditious manner out there?

4 A Yes, sir.

5 Q And did I understand the final testimony, or the  
6 bottom line, to be that you are refining those plans? You  
7 have an overall plan, and you're going to refine them more  
8 specifically perhaps for a nuclear incident; is that right?

9 A That's correct, yes, sir.

10 Q And would you expect any such plans to be implemented  
11 prior to the operation of the plant?

12 A Yes, sir, it will be. We have called people in  
13 Hershey, Pennsylvania that handled the evacuation of TMI,  
14 and I have their township's evacuation on hand at the park.  
15 We have made tours of Three Mile Island, and we work with  
16 those people, too. And it will all be formulated before  
17 the plant will be open.

18 MR. WILSON: Thank you, Mr. Oliphant.

19 BY MR. JOHNSON:

20 Q Mr Oliphant, in the event that it was determined  
21 to perform a precautionary evacuation, as you described  
22 just briefly --

23 A I'm having a hard time hearing you.

24 Q There was a question with regard to a precautionary  
25 evacuation. Now, in the event that you determined that a

1 precautionary evacuation was appropriate, at that time would  
2 it be contemplated that you would inform the people in the  
3 park the reason for the precautionary evacuation?

4 A On a precautionary measure, it is still -- we are  
5 still debating exactly what to say on that pre-recorded  
6 message. What we have now is technical problems that have  
7 developed within the park. That's what we say at this time.

8 So we would probably go ahead and say a problem  
9 at Catawba. I have the listings of the different announce-  
10 ments in my office now, and it would probably spell out  
11 exactly what's happening.

12 MR. JOHNSON: Okay, thank you.

13 JUDGE MARGULIES: Applicant?

14 BY MR. MC GARRY:

15 Q Mr. Oliphant, I'm interested in your background.  
16 Could you share that with me? The relevant background to  
17 your experience in evacuation or emergency situation.

18 A Well, I've been in this particular job for seven  
19 years now. I have at least 13 or 14 years of fire service  
20 and rescue, which has involved evacuation of neighborhoods,  
21 some areas of Arrowood Industrial Park, and I have worked on  
22 plane disasters before, Flight 212 in Charlotte, and we  
23 assisted in numerous tornado happenings where evacuations  
24 had to be handled.

25 Q The figure 36,000 has been used in association with

1 Carowinds. Will you have 36,000 people at one time at  
2 Carowinds?

3 A No, sir.

4 Q What's the maximum number of people you'll have at  
5 one time?

6 A Approximately 26,000.

7 Q There was reference made to Intervenor's Exhibit 41,  
8 which is a memo from Jerry Lutes to John Lee. In the last  
9 paragraph your attention is directed to that. I ask you if  
10 this is not a fair reading or a correct reading of that  
11 paragraph. "In summary, it appears that evacuation of  
12 Carowinds on a peak day is a monumental task requiring  
13 careful planning and good traffic control."

14 Do you have careful planning at Carowinds?

15 A Yes, we do.

16 Q Do you believe you have good traffic control?

17 A Yes, sir.

18 Q The next sentence read, "But the time required for  
19 the evacuation is well under the three hours and 25 minutes  
20 required to evacuate the residential population." Do you  
21 concur with that?

22 A I do.

23 Q There was a question concerning why is Carowinds  
24 given a priority notification or precautionary notice.  
25 Does that have anything to do with the fact that there would

1 be a significant number of people located in one locale at  
2 Carowinds?

3 A That's correct.

4 Q There was discussion of lines forming up three or  
5 four times a year on I-77 for people waiting to get in.  
6 Do you recall that?

7 A Yes, sir.

8 Q During those three or four times a year, are law  
9 enforcement officers out on I-77 or even involved with  
10 bringing people into Carowinds?

11 A All they're doing is just monitoring the flow;  
12 they're not directing traffice.

13 Q And do you use all your available resources on  
14 those particular occasions to get people into Carowinds?

15 A Yes.

16 Q Do you have other sources or resources you could  
17 bring to bear if you had to?

18 A On bringing the people inside the park?

19 Q Right.

20 A No, sir, we are at our limit when we are working  
21 on this.

22 But I do say that the traffic does not back up on  
23 the main highways when we're exiting the park.

24 Q So that the record is clear, is it fair to draw an  
25 implication that these examples three or four times a year

1 of traffic backing up on I-77 could be equated to an  
2 evacuation situation? Do you have the same number of  
3 resources that are brought to bear on your three or four times  
4 a year backup on I-77 that you anticipate will be brought to  
5 bear in an evacuation situation?

6 A We would have more people in the evacuation problem.  
7 More outside agencies.

8 Q You were discussing the precautionary notice.  
9 That precautionary notice comes from Wayne Broome; is that  
10 correct?

11 A Right.

12 Q When you get that notice, what do you do?

13 A I would notify the general manager and the park  
14 operations director. We would go ahead and inform all our  
15 local law agencies which would really already be informed by  
16 Mr. Broome, and put the actual event into motion.

17 Q And the time taken for that activity is factored  
18 into your 2 1/2 to 3 hour figure?

19 A That's correct.

20 Q There was also some discussion with Mr. Johnson  
21 concerning the type of notice that would be given, and you  
22 indicated in the first instance that notice would probably  
23 not make mention of an emergency at Catawba; is that right?

24 A I believe that would be the best way to go. I  
25 believe Mr. Broome has other thoughts on that matter.

1 Q And your 2 1/2 to 3 hour figure assumes no advising  
2 of the public in Carowinds of a nuclear emergency at Catawba,  
3 is that correct?

4 A At this time, yes, sir.

5 Q In your judgment, if such a notice were given,  
6 that is, that the public inside Carowinds were notified that  
7 there's a nuclear emergency at Catawba, do you believe that  
8 that 2 1/2 to 3 hour figure would be substantially reduced?

9 A I believe it would be a lot faster.

10 Q And would you be able to cope with that?

11 A Yes, sir, I believe so.

12 Q And in that situation, would you be taking people  
13 out of line, shutting down your rides and getting them out?

14 A Yes, sir, we would.

15 Q I was a little bit unclear when you were talking  
16 about Smurf Island, you were talking about campers. Were  
17 those individuals factored into your 2 1/2 to 3 hour estimate?

18 A That's correct.

19 Q Now, I'm looking at Mr. Kulash's Attachment E to  
20 his testimony concerning 14 and 15. Are you familiar with  
21 this document which is entitled, "Catawba Nuclear Station  
22 Evacuation Analysis, Evacuation Time Estimates for Carowinds  
23 and Heritage, U.S.A."

24 A I would have to look at the document. I don't  
25 believe so.

- 1 (Counsel handing document to witness.)
- 2 A I have some of this material but not this package.
- 3 Q Mr. Kulash states on page 1, "AT peak attendance  
4 it is estimated that two hours would be needed to get visitors  
5 from the park to the parking lot." I believe you indicated  
6 that it would be between 2 1/2 to 3 hours, but you also  
7 stated that if a nuclear emergency at Catawba was referenced  
8 it would be quicker than that.
- 9 A That's right.
- 10 Q And two hours would then be a reasonable number?
- 11 A I believe it would be reasonable.
- 12 Q Mr. Kulash makes reference to 5600 cars, and that's  
13 associated with the main parking lot at the adjacent grassy  
14 areas, which I guess is the berm area, is that correct?
- 15 A Yes.
- 16 Q Does that seem to be a representative figure?
- 17 A Yes, sir. I have estimated 58, I believe, but  
18 it's in that area.
- 19 Q He says, "will hold about 5600."
- 20 A Right.
- 21 Q Now, you also made reference to the location for  
22 buses, an additional lot that holds approximately 700 cars  
23 and also, some camper locations; is that correct?
- 24 A Right.
- 25 Q Now, would you estimate -- let me just stop there.



1           With respect to these 5600 cars, Mr. Kulash estimates  
2 that two lanes are normally used for exiting the lot, so  
3 about two hours and 20 minutes would be required to empty  
4 the lot when full.

5           A     Yes, sir.

6           Q     Does that seem like a reasonable number to you?

7           A     That has been what, just on an average when we  
8 have a full lot that is what it has taken. Sometimes less  
9 than that, depending on the flow of traffic.

10          Q     And that time would include also the buses, the  
11 700 vehicles on the other lot and the campers?

12          A     Yes, sir.

13          Q     Now, Mr. Kulash also said that two additional lanes  
14 may be pressed into service to shorten this time. One  
15 leads from the main lot to Carowinds Boulevard, intersecting  
16 Carowinds Boulevard at a point about 0.2 miles northwest to  
17 the main entrance. Will that road be used in an emergency  
18 situation?

19          A     It could be.

end 21

20

21

22

23

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25

nations

#22-1

1 Q If necessary in a peak crowd, you would use that,  
2 is that correct?

3 A Yes.

4 Q Then he also indicates a hairpin turn would be  
5 required to get into it directly from the main parking lot.  
6 If one of these lanes were used as third exit lane, the  
7 time to clear the parking lot would drop to about one hour  
8 and 35 minutes. In a peak situation, in an emergency if  
9 necessary, would you open up this additional line that  
10 would be serving as a third exit lane?

11 A Yes, we would.

12 Q It is a little bit unclear with respect to the  
13 configuration of Carowinds. As I understand Carowinds and I  
14 have been there myself with my family, it appeared to me to  
15 be a hub concept. That is, you have the circle in the middle  
16 and you have radii protruding from the center of that circle,  
17 is that correct?

18 A That is true.

19 Q So if an individual is at one end of a radii at one  
20 location to get to another location in the park, he would  
21 come back that radii and then go out to another radii?

22 A That is correct.

23 Q There was a question posited concerning a fast-  
24 developing accident at Catawba which would involve a situation  
25 where the people in the EPZ, the 10-mile EPZ, should shelter

1 and didn't evacuate. If that were the case based on your  
2 experience, would you assume that there would be a lower flow  
3 of traffic on I-77 than in an evacuation situation?

4 A That is correct.

5 Q If that were the case then, would it seem reasonable  
6 to you that people would be able to be removed from Carowinds  
7 in an even more expeditious fashion?

8 A It is possible, yes, sir.

9 Q With respect to your plan and your discussions with  
10 Mr. Broome, am I safe to assume that you and Mr. Broome have  
11 been in quite a bit of contact concerning refining your  
12 plan?

13 A Yes, sir.

14 Q Am I correct in using the term "refining?"

15 A Yes.

16 Q You have a plan in place?

17 A We had a plan as stated before that would cover any  
18 type of disaster or emergency.

19 Q And what remains is to develop some specific  
20 operating procedures that would take into account a nuclear  
21 emergency?

22 A Yes, sir. Buses were mentioned. All this will be  
23 into the plan.

24 Q You expect that to be accomplished in the near term?

25 A Yes, sir. I do.

1 Q I imagine when Mr. Broome gets freed up from these  
2 hearings?

3 A It will be.

4 Q There was discussion about the knowledge of people  
5 coming to your park.

6 A Yes, sir.

7 Q Do your time estimates presume any knowledge of a  
8 nuclear emergency on the part of the people in the park?  
9 Does it presume any knowledge on the part of the people that  
10 the Catawba plant is close by and a knowledge of what they  
11 should do in the event of an emergency?

12 A I really don't understand the question.

13 Q You assumed two and a half to three hours or in  
14 some situations even two hours to get the people out of the  
15 park.

16 A Right.

17 Q Do you assume that those people have any knowledge  
18 whatsoever of the existence of Catawba?

19 A Some would.

20 Q Does that have any bearing on your two and a half  
21 to three hour figure?

22 A No, sir.

23 Q I used the term "near term" with respect to your  
24 plans being developed in your consultations with Mr. Broome.  
25 Near term would be before the plant goes into operation.

22-4

1 A That's true.

2 Q The plant is going to be operational in the next  
3 several months hopefully.

4 A Yes.

5 Q You expect to accomplish that within that time?

6 A I would say so. Yes, sir.

7 MR. MCGARRY: Thank you.

8 JUDGE MARGULIES: Anything further for Mr. Oliphant?

9 MR. GUILD: Yes, Mr. Chairman.

10 REDIRECT EXAMINATION

11 BY MR. GUILD:

12 Q When you said that you were familiar with this  
13 document Mr. Kulash prepared, that is his attachment "E", his  
14 study of the evacuation of Carowinds.

15 A I said that I had seen some parts of it. I do not  
16 have the whole thing.

17 Q Oh, you don't?

18 A No, sir.

19 Q You were just telling Mr. McGarry all these things  
20 about this document and how accurate it was.

21 A I said that I had seen some of those reports before  
22 and he asked me specific questions. It could have been in any  
23 document.

24 Q Let me ask you a specific question, sir. Mr. McGarry  
25 said that your projections on the time to evacuate Carowinds

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22-5

1 were based on the presumption that it would be a precautionary  
2 evacuation. In other words as we have stated you would be  
3 evacuating before the EBS message and the sirens and everybody  
4 else was going.

5 A That is correct.

6 Q Where in Mr. Kulash's study does he state that it is  
7 assumed that you are doing a precautionary evacuation? Do you  
8 know where it is in there?

9 A No, sir.

10 Q Is it in there?

11 A I do not know, sir.

12 Q Take a moment and look at it so you can tell me  
13 whether or not Mr. Kulash assumed that there was a precautionary  
14 evacuation.

15 MR. MCGARRY: Your Honor, I think the document speaks  
16 for itself. It is in evidence and you can draw whatever  
17 conclusion. We are trying to press along.

18 BY MR. GUILD: (Resuming)

19 Q Would you accept that there is no mention whatsoever  
20 of precautionary evacuation as an assumption underlying Mr.  
21 Kulash's study?

22 A Not until I read the whole document.

23 Q You take your time and find it, sir, because I  
24 submit to you it is not in there.

25 A What is that in relevant to regardless of this?

22-6

1 JUDGE MARGULIES: Is it something that counsel could  
2 stipulate? Time is getting late and you still want to put on  
3 another witness. You may wind up not being able to take that  
4 other witness.

5 MR. GUILD: Only if that is your judgment, Mr.  
6 Chairman.

7 JUDGE MARGULIES: We are down to a quarter after  
8 five right now.

9 MR. GUILD: Will counsel stipulate that the Kulash  
10 study does not presume a precautionary evacuation?

11 MR. MCGARRY: Subject to check, yes, we will  
12 stipulate.

13 MR. GUILD: Thank you.

14 BY MR. GUILD: (Resuming)

15 Q Frankly, Mr. Oliphant, I am a little incredulous  
16 that you don't even tell people at the time that there is an  
17 incident at the Catawba Station, that the Catawba Station is  
18 up the road or that they are responding to a nuclear incident.  
19 Did I clearly understand that, sir, that your presumed  
20 evacuation is on the basis of not even telling people at the  
21 time you are telling them to clear the park that there is  
22 anything except technical problems?

23 A That is usually standard procedure for any major  
24 attraction area.

25 Q Let's say that somebody is being told to leave the

1 park because there are technical problems and the plume  
2 actually comes their way and because you hadn't told them  
3 that they are leaving the park because of a nuclear incident  
4 at the plant, they have no idea that this unseen, unsmellable  
5 hazard to their health and life -- radiation -- is out there.  
6 So they don't know to take a handkerchief and put it over  
7 their nose and mouth. They don't know that they should go  
8 to a structure and seek shelter if they can find one closeby  
9 and instead they just go on their way assuming that some  
10 technical problem at Carowinds has caused the shutdown.

11 Aren't you then going to subject your people at  
12 Carowinds, your guests, your customers to an unnecessary  
13 exposure to radiation because you hadn't told them the truth?

14 A Not when I am moving ahead on an alert status. No,  
15 sir. I don't feel that way.

16 Q While you are moving ahead on your alert status --

17 A How can I tell them -- how can I evacuate when Duke  
18 Power has not authorized an evacuation of that area.

19 Q It is not up to Duke to authorize an evacuation at  
20 all, Mr. Oliphant, I submit to you and if you are operating  
21 under the presumption that Duke has to authorize an evacuation,  
22 you are incorrect.

23 A We would be going on Duke's word and Mr. Broome's  
24 word on what would occur. It would not be a general emergency  
25 at that time.



1 Q I submit to you, sir, that if you told people to  
2 leave the park because there is an alert that you don't tell  
3 them there is anything but a technical problem they are  
4 leaving the park as Mr. Riley suggests, the plume gets there  
5 within two hours while they are in the process of getting  
6 out of your park that you are going to expose people to  
7 radiation. I ask you, sir, if you assume that is true  
8 is that something that you would do?

9 A If that is the case, then we would receive more word  
10 from Wayne Broome that it has escalated upward and then the  
11 announcement would be made.

12 Q So while they are in the middle of evacuating because  
13 of technical problems, then you tell them the truth. Is that  
14 what you would do?

15 A What else would I have? I have told you that we  
16 do not have the shelter to house 26,000 people.

17 Q It is your testimony in response to the lawyer for  
18 Duke Power Company that if you told them the truth they would  
19 move faster and more efficiently than if you told them it was  
20 a technical problem?

21 A I did not say that they would move more efficiently.

22 Q You told him that it would take less time, didn't  
23 you?

24 A I imagine so, sir. If you came out with a general  
25 announcement, I certainly would move a lot faster.

1 Q Yes, sir. I probably would move a lot faster and  
2 I might run over somebody, trample somebody. I might run  
3 in and have a car accident. You have heard the expression,  
4 "You don't cry 'Fire' in a crowded theatre."

5 A More exits would be open for the people.

6 MR. MCGARRY: Your Honor, may I interject here.  
7 I think we are going way beyond the scope in the sense that  
8 we are now engaging in arguments.

9 MR. GUILD: I am trying to be quick, Mr. Chairman,  
10 and I will rephrase my question.

11 JUDGE MARGULIES: It isn't a matter of quickness. It  
12 is a matter that you are arguing with the witness. What comes  
13 across from what you are doing is that you are unhappy with  
14 the policy of Carowinds and you are trying to argue with him  
15 to change it.

16 MR. GUILD: No, sir. I am not. I am trying to make  
17 a point, sir. Whether it gets to the Chair or not, I am trying  
18 to make a point. I am trying to be an advocate, sir, and my  
19 feelings about Mr. Oliphant and his plan may be apparent to  
20 you, sir, but I am trying to make a point.

21 JUDGE MARGULIES: You are acting more like a debater.

22 MR. GUILD: I apologize if that irritates you, sir,  
23 and you find that unpersuasive.

24 JUDGE MARGULIES: That is not the function of counsel  
25 in an evidentiary hearing.

1 MR. GUILD: That is your view, Mr. Chairman.

2 BY MR. GUILD: (Resuming)

3 Q Mr. Oliphant, your serious belief then, sir, is that  
4 people will respond more calmly and in a more orderly fashion  
5 and will more efficiently evacuate your park if you do as  
6 Mr. McGarry suggests and in the process of this precautionary  
7 evacuation then tell them that there has been a nuclear  
8 accident, is that your testimony?

9 A Repeat that again. My mind is really about gone.  
10 I really can't concentrate, Your Honor.

11 JUDGE MARGULIES: I can understand that. You have  
12 been on the stand a very long time.

13 WITNESS OLIPHANT: Would you repeat that again?

14 MR. GUILD: I will try.

15 BY MR. GUILD: (Resuming)

16 Q You told Mr. McGarry that you thought that it would  
17 increase the efficiency of evacuation of Carowinds if you told  
18 them that it was --

19 A No, sir. I did not say increase the efficiency. I  
20 said it would move faster because we would open more exit  
21 gates.

22 Q I thought I understood the implication of your  
23 answer was that people would move faster if they knew that there  
24 was a nuclear accident?

25 A That is right. You said efficiently.

22-11

1 Q Let's not quibble, Mr. Oliphant. I want to let you  
2 go home, sir. Just please try to respond to my questions  
3 and you don't need to argue with me and I will try not to  
4 argue with you, sir.

5 A I have been answering.

6 Q Am I to understand that you would get people out  
7 more quickly from your testimony to Mr. McGarry if you told  
8 them it was a nuclear accident?

9 A Yes, sir.

10 Q Does that mean that there would be less panic if  
11 you told them that it was a nuclear accident?

12 A That is another assumption that I cannot answer. I  
13 do not know.

14 Q You are an expert in evacuations.

15 A Not on a nuclear facility.

16 Q All right, sir. But your assumption is that people  
17 would behave in a more orderly and efficient and would get out  
18 faster if you told them that it was a nuclear accident than  
19 they would if you didn't?

20 A I am not saying that they would be more orderly.  
21 I said they would be faster.

22 Q The total time to evacuate would be shorter. That is  
23 your position.

24 A I believe that it could be. Yes, sir.

25 Q Do you think it would be more orderly?

22-12

1 A No, sir.

2 Q Less orderly?

3 A Less orderly.

4 Q But still quicker?

5 A Yes, sir.

6 MR. GUILD: Thank you.

7 JUDGE MARGUILES: Anything further for this witness?

8 MR. RILEY: I have one question.

9 RECROSS EXAMINATION

10 BY MR. RILEY:

11 Q Is it your experience, Mr. Oliphant, that occasionally  
12 on a peak day you will have a summer thunderstorm come up or  
13 something like that?

14 A Some days, yes, sir, we have had storms.

15 Q What effect do you think a storm would have if it  
16 were coincident with an evacuation situation? Will it slow  
17 it? Speed it up? Have no effect?

18 A That is total assumption. I can't answer that.

19 MR. JOHNSON: I object to this line of questioning.  
20 It goes well beyond the redirect and it seems improper to  
21 go into this subject at this time.

22 JUDGE MARGULIES: Objection sustained. You are  
23 excused, Mr. Oliphant. Thank you for coming here today.

24 (Witness excused.)

25 JUDGE MARGULIES: What is the expected time for the

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1 examination of Mr. Fincher?

2 MR. GUILD: My redirect is dependent on the  
3 yet to be completed cross of applicants, so don't look at  
4 me, Judge. We projected that it would be five minutes  
5 a piece when we had Mr. Fincher at this point in time yesterday  
6 evening and we were not allowed to go forward with him but  
7 I don't know whether Mr. Carr's plans have changed in that  
8 regard. We would like to finish him right now.

9 MR. CARR: They have not. I still anticipate no  
10 more than five minutes, ten at the very outside. Mr. Fincher  
11 informed me that he would not be available tomorrow, Your  
12 Honor.

13 JUDGE MARGULIES: Assuming he takes ten minutes,  
14 what is your estimate?

15 MR. GUILD: Ten minutes, Your Honor.

16 JUDGE MARGULIES: Staff?

17 MR. JOHNSON: At the present time I have no  
18 questions.

19 JUDGE MARGULIES: Mr. Wilson is not here. You may  
20 resume the stand, Mr. Fincher.

21 Whereupon,

22 LUTHER FINCHER,

23 was recalled as a rebuttal witness, and having been previously  
24 duly sworn, continued to be examined and continued to testify  
25 as follows:

22-14

XXXXXXXXXXXX

## 1 CONTINUED CROSS-EXAMINATION

2 BY MR. CARR:

3 Q Mr. Fincher, yesterday afternoon I had just shown  
4 you the All Hazards Plan which is in evidence as Intervenor's  
5 Exhibit EP-46 and we were going to talk about a couple of  
6 points there. First I would like to point you to the section  
7 entitled, "Special Situation" "II" on page "1" and just ask  
8 you, does that plan contemplate or address nuclear power  
9 plants in or near Mecklenburg County?

10 A Yes, it does.

11 Q I would like to inquire with respect to the All-  
12 Hazards Plan about the working of the All-Hazards Plan with  
13 the Baxter-Harriss fire. First I would like to direct your  
14 attention to the section entitled, "Concept of Operations"  
15 on page three under "VI."

16 I won't go through each of these items "A" through  
17 "H" in detail but let me just ask you with respect to the  
18 functioning of the plan during the fire. The document is in  
19 evidence and it will speak for itself. Were the provisions  
20 under paragraph "A" carried out during the Baxter-Harriss fire?

21 A (Perusing document.)

22 It was.

23 Q Paragraph "B"?

24 A (Perusing document.)

25 It was.

22-15

1 Q Paragraph "C"?

2 A (Perusing document.)

3 It was.

4 Q Paragraph "D"?

5 A (Perusing document.)

6 It was.

7 Q Paragraph "E"?

8 A (Perusing document)

9 Yes, it was.

10 Q Paragraph "F"?

11 A (Perusing document.)

12 Yes.

13 Q Paragraph "G"?

14 A (Perusing document.)

15 Yes.

16 Q And paragraph "H"?

17 A (Perusing document.)

18 Yes.

19 Q Did you follow the All-Hazards Plan, do you know,

20 with respect to warning? That is "VII" on page three? I

21 refer you there, "Were actions taken to alert people in the

22 danger area to turn on radio and TV for information and

23 instructions as to what they should do and was information

24 and instructions transmitted to people in the danger area?

25 A It was.



22-16

1 Q With respect to paragraph "A-2," did the Charlotte  
2 police and fire departments dispatch adequate law enforcement  
3 and fire personnel with vehicles equipped to patrol areas  
4 and inform people of what was happening?

5 A Yes, they were.

6 Q Paragraph "4," "Law Enforcement Officers giving  
7 special attention in remote areas." If necessary did they  
8 knock on doors to assure that people were alerted?

9 A They did. They had to knock on doors several times  
10 because we had to evacuate one person who was in a total body  
11 cast.

12 Q Do you know if paragraph "5" was complied with on  
13 page four?

14 A I am not sure of that. That would be up to Mr.  
15 Broome.

16 Q Now on page five with respect to paragraph "B",  
17 were items in paragraph "B" numbered one, two and three  
18 complied with?

19 A (Perusing document.)

20 It was.

21

22

23

24

25

end#22

T23 MM/mml

1 Q And finally, under Paragraph VIII, Responsibilities  
2 beginning on page 5.

3 Does your Fire Department maintain an alerting list?

4 A Yes, sir, it does.

5 Q And your Emergency Office that you are acting head  
6 of, Emergency Managing Office, does it comply with those  
7 provisions?

8 A Yes, sir, it does.

9 Q Now I believe that you also testified yesterday  
10 that to the extent that the Baxter-Harriss fire demonstrated  
11 potential problems, or problems with respect to the All  
12 Hazards Plan, that those matters are being corrected at this  
13 time, or have been corrected?

14 A The majority of them have been corrected and are  
15 yet to be written.

16 Q Now, for example, with Police notification of the  
17 public, has the Baxter-Harriss fire, as well as the planning  
18 for Catawba caused you to consider refining such Police  
19 notification of the public?

20 And, you stated that as a result of the fire, you  
21 will no longer be using voting precinct concept of notification.  
22 Is that correct?

23 A That is correct.

24 Q Now with respect to the new zones for notification  
25 under the All Hazards Plan, will you and/or Mr. Broome be

mm2

1 meeting or have met with authorities in these new zones to  
2 assure that they have capability to make timely notification  
3 of the public?

4 JUDGE MARGULIES: Isn't this repetitive, counsel?

5 MR. CARR: No, I don't believe it is, your Honor.

6 This goes to the question that was asked yesterday  
7 about the voting precincts.

8 JUDGE MARGULIES: And he testified that they were  
9 not going to use them anymore.

10 MR. CARR: That is correct.

11 JUDGE MARGULIES: And he was meeting with Mr. Broome  
12 to correct the situation.

13 MR. CARR: This is the next-to-the-last question  
14 on this, your Honor.

15 THE WITNESS: I got lost in your conversation.

16 BY MR. CARR:

17 Q Are you meeting with the persons in the new  
18 notification areas to assure that they have the capability  
19 to notify --

20 A Yes, Mr. Broome and I have discussed it. And,  
21 upon availability of time we will meet with the Police  
22 Department and determine if they have the adequate resources  
23 to evacuate those given areas that we will set up.

24 Q And provide timely notification to the public?

25 A Yes, sir.

mm3

1 Q And this will be set forth in procedures,  
2 standard operating procedures under the All Hazards Plan which  
3 will be prepared in a timely fashion?

4 A Yes, sir.

5 MR. CARR: Thank you. That is all I have, sir.

6 REDIRECT EXAMINATION

7 BY MR. GUILD:

8 Q Mr. Fincher, we talked yesterday -- I won't  
9 repeat. There were problems that were disclosed in the  
10 implementation of the All Hazards Plan, and in its primary  
11 use -- that was the Baxter-Harriss chemical fire?

12 A Yes, sir.

13 Q As of now, though, the All Hazards Plan has been  
14 unchanged to reflect the corrections of those problems and  
15 we have the current version, the 1982 version that is now  
16 in evidence in this case?

17 A That is correct.

18 Q Now you and I talked yesterday about those problems  
19 and they were reflected in substantial part in a document that  
20 I am showing you entitled Report on Chemical Fire. We  
21 examined principally from that document yesterday.

22 Is that that document?

23 A Yes, sir.

24 Q This is a report that, as we discussed yesterday,  
25 was prepared to review the Baxter-Harriss chemical fire, and

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mm4

1 includes a list of identified problems on page 6 and  
2 recommendations on page 7?

3 A Yes, sir.

4 MR. GUILD: Mr. Chairman, we would ask that this  
5 document be marked and received in evidence as the next  
6 hearing exhibit, 52.

7 MR. CARR: No objection from us, your Honor.

8 JUDGE MARGULIES: Do you have copies?

9 MR. GUILD: Yes.

10 JUDGE MARGULIES: How about 51. We still don't  
11 have it.

12 MR. GUILD: Judge, I have been here since last  
13 time you asked about it. I will get it in the morning.

14 (Document distributed to Board and Parties)

15 JUDGE MARGULIES: Did I hear you state there was  
16 no objection to its admission, sir?

17 MR. CARR: You did, sir.

18 JUDGE MARGULIES: It is admitted into evidence as  
19 Intervenors' EP-52.

20 (The document referred to was  
21 marked Intervenors' Exhibit No.  
22 EP-52 for identification and  
23 received in evidence.)

24 BY MR. GUILD:

25 Q Now, I think the measure of the effectiveness of

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1 the All Hazards Plan in use at Baxter-Harriss is determined  
2 by the degree to which you got people out of the way of  
3 the hazard that was posed in that case. And in that case it  
4 was toxic fumes airborne by the wind coming from that  
5 chemical plant, correct?

6 A Yes, sir. That is correct.

7 Q Now the bottom line, Mr. Fincher is, you didn't  
8 get everybody out of the way before they were exposed to  
9 those fumes, did you?

10 A Well, I was at the scene of the fire as the  
11 commander, so I wouldn't know that everybody was out of the  
12 way.

13 I would expect sure that people had an odor.

14 Q And the odor is your sensory indication or symptom  
15 that you are in the presence of those toxic fumes, correct?

16 A Correct.

17 Q And that would suggest that persons were not  
18 evacuated effectively before the plume carrying the toxic  
19 chemical reached them, correct?

20 A Please rephrase the question.

21 Q If someone smelled the fumes, that indicates that  
22 they were in the presence of the toxic gas. You try to  
23 evacuate people so that they wouldn't be exposed to gas, but  
24 if they smelled it they were in the presence of it and they  
25 didn't get out of the way, then they didn't get out of the way

mm6

1 in time?

2 A I disagree with you that because they smelled  
3 an odor that may not have been the threshold limit of that  
4 specific toxic chemical.

5 JUDGE MARGULIES: That was the testimony yesterday,  
6 counsel, and the witness mentioned gasoline specifically.  
7 That you may smell gasoline, but it may not constitute a  
8 danger.

9 MR. GUILD: Thank you.

10 BY MR. GUILD:

11 Q All right, sir. You don't know whether or not  
12 people were exposed to harmful levels from that toxic gas,  
13 do you?

14 A No, I don't know.

15 Q All right.

16 Do you understand that that specific toxin, the  
17 chemical that was released in the Baxter-Harriss fire has  
18 long-term health effects? Potential carcinogenic effects  
19 from inhalation?

20 A I don't know that sulfur dioxide is a carcinogen,  
21 no.

22 Q You don't know that?

23 A No, sir, I do not.

24 Q Look at page 5 of this report. I'm looking under  
25 the provision -- the paragraph that is entitled Medical Care.

mm7

1                   And I read at the end of that paragraph: "It was  
2 reported that over 100 civilians in the area also reported  
3 to the hospitals over the next several days. At this time the  
4 total medical effects of city employees or civilians are  
5 not known."

6                   Now, does that accurately reflect that the success  
7 with which you actually evacuated people out of harm's way is  
8 not known?

9           A       That we don't know --

10           Q       That you might not have gotten people out of the way  
11 in time, Mr. Fincher?

12           A       No, sir, it doesn't really measure that. I think  
13 that some of the people actually refused to leave.

14           Q       And that is who you figure these 100 people are?

15           A       No, sir. I don't.

16           Q       What I want to know, sir, is you will agree, don't  
17 you, that you may have people out there who you didn't get  
18 out of the way in time of the Baxter-Harriss who are among  
19 the 100 people that your own report suggests turned up in  
20 hospitals for medical care, whose long-term health effects  
21 we don't know right now, correct?

22           A       No, sir. I still don't believe that.

23           Q       What is wrong with that statement?

24           A       Well, there was a radio broadcast issued that  
25 anybody who wanted to be checked, or thought that they might



mm8 1 have any ill effects, to come by the hospital and get  
2 checked.

3 Q All right. And those people thought they had  
4 exposure, didn't they, or they wouldn't have shown up and  
5 gotten the medical check?

6 A That's correct.

7 MR. CARR: I object --

8 MR. GUILD: I'm sorry?

9 MR. CARR: Go ahead.

10 BY MR.GUILD:

11 Q And as the medical people say, your own medical  
12 division, "The total medical effects of city employees and  
13 civilians are not known at this time."

14 A It was not known at the time that this report  
15 was written. This report was written within the week of  
16 that fire.

17 Q All right.

18 A Since that time, within several months after the  
19 fire, the urine samples, the blood samples were all back from  
20 all of these people and the results were negative on  
21 everyone, except one person. And that was a firefighter.

22 Q All right, sir.

23 What I am asking you, sir is if the effects are  
24 long term --

25 A There is no long-term effect against sulfur dioxide  
that I know of, unless it is in a concentrated level.

1 Q And your testimony, sir, is you're confident that  
2 despite the fact that 100 people showed up believing they  
3 had been exposed, that there are no long-term health effects.

4 A Yes, sir. We had people show up at the shelters.

5 Q You're counting those people as people that were  
6 evacuated, aren't you?

7 A We had, we fed them.

8 Q The bottom line, Mr. Fincher, is your own report  
9 shows that 100 people, according to them, their records  
10 reflect that 100 people believe they were exposed to the  
11 toxic plume, meaning that they did not get out of the way in  
12 time and sought medical aid for that reason.

13 MR. CARR: Objection, Your HOnor. That assumes a  
14 number of facts not in evidence. Mr. Fincher doesn't know  
15 the basis for the assumption; he has already testified a  
16 couple of times about the fact that these people showed up,  
17 and testing samples were taken and have come back. Let's  
18 stop belaboring this; we're getting to the point where we're  
19 getting argumentative here.

20 MR. GUILD: I want an answer to the question, Mr.  
21 Chairman. The fact of the matter is I don't know how else  
22 to interpret it except the way I just posed the question.

23 MR. CARR: Well, he's answered it two or three times.

24 MR. GUILD: Excuse me, counsel, can you stop  
25 interrupting me and we'll get this thing done.

1 JUDGE MARGULIES: Can I have your question again?

2 BY MR. GUILD:

3 Q The fact of the matter is enough people were  
4 exposed to the hazard, whether they had long-term health  
5 effects, short-term health effects or no effects. Enough  
6 people were exposed to the hazard that 100 of them went and  
7 sought medical care. NOW, does that indicate that you were  
8 completely effective in evacuating people before they were  
9 exposed to the toxic plume?

10 A I think we were completely effective.

11 Q All right, sir. And would you be complete effective  
12 by the same measure, Mr. Fincher, in the event of a serious  
13 accident at the Catawba facility if, let's say, 100 out of  
14 3000 people are exposed to radiation instead of toxic  
15 chemicals, and that 3 percent -- and 3 percent of 33,000,  
16 let's say -- Three percent of 150,000 people, let's say,  
17 round numbers, in southwest Charlotte. 4,500 people are  
18 exposed to radiation because your all-hazards plan doesn't  
19 get them out of the way in time. Would that be 100 percent  
20 complete success, in your view?

21 A I don't know how to answer your question.

22 Q Are you willing to sacrifice 3 percent of the  
23 people of southwest Charlotte, if the same degree of effective-  
24 ness as at Baxter-Harriss is demonstrated in the event of an  
25 accident at Catawba?

1 MR. CARR: Objection, Your Honor. There is no  
2 foundation for that question. Mr. Fincher has testified  
3 that he thinks the plan was completely effective. There's  
4 nothing in the record except Mr. Guild's supposition that  
5 these 100 civilians in the area that are reported in here  
6 in this exhibit were exposed. It says they reported to the  
7 hospital and Mr. Fincher has testified that the tests that  
8 came back on them were negative.

9 Now please, if Mr. Guild doesn't like the answer,  
10 let him stop arguing with the witness and let's put an end  
11 to this.

12 MR. GUILD: I submit that the evidence is of record,  
13 Mr. Chairman, and the premise for the question is absolutely  
14 well-founded.

15 If Mr. Fincher's position is that 100 people were  
16 exposed to the plume of the 3000 people that were evacuated  
17 represents complete effectiveness and the same proportionate  
18 impact occurs in the event of an accident under use of the  
19 all-hazards plan, we're talking about, as a matter of  
20 mathematics, 4500 people. And I want to know if in his  
21 judgment as the witness stating the all-hazards plan works  
22 fine if sacrificing 4,500 Charlotteans is all right by him.

23 JUDGE MARGULIES: There's no basis that those  
24 100 people reported were exposed. Mr. Fincher's testimony  
25 was the word went out that anyone who wants to be checked

1 can go to the hospital.

2 MR. GUILD: Judge, that's absolutely ludicrous.  
3 Why would someone want to be checked if they didn't believe  
4 they were exposed? And I submit to you, sir --

5 JUDGE MARGULIES: The fact that they believe they  
6 were exposed does not mean that they were exposed.

7 MR. GUILD: Well, I submit to you, sir, that it's  
8 the best evidence we have. And if we have 100 people,  
9 3 percent of the evacuated population that because they were  
10 exposed to a hazard that they can see in this case and they  
11 can smell in this case, and they believe that they have been  
12 exposed and they go to the hospital and seek medical help,  
13 that you should take note of it as an indication of the  
14 inadequacy of this plan, Judge.

15 And for you to ignore it, I submit, is ignoring  
16 facts and ignoring reality.

17 JUDGE MARGULIES: I sustain the objection.

18 MR. GUILD: I have no further questions, but I  
19 submit the document by way of an offer of proof with respect  
20 to the question. And I would like the record to reflect  
21 the witness's answer that that was an effective measure of  
22 the effectiveness of the all-hazards plan.

23 I submit that his answer to the question that you  
24 would not allow him to respond to would be that the all-  
25 hazards plan, if it produced 4500 people in southwest

1 Charlotte who were exposed, would still represent an  
2 effective plan. We maintain, of course, to the contrary.

3 JUDGE MARGULIES: Is there anything further of the  
4 witness?

5 MR. RILEY: Mr. Chairman?

6 BY MR. RILEY:

7 Q It was your testimony in response to Mr. Carr  
8 yesterday that -- well, while I don't use your exact language,  
9 the County Commission in its meeting last Monday rejected  
10 the report of the blue ribbon committee which had asked to  
11 have the County Commission contend that there should be an  
12 extension of the emergency planning zone; is that correct?

13 A Well, I don't know the exact wording yesterday  
14 either. I can't remember. I remember that you and I,  
15 Mr. Rutledge and Mr. Guild discussed that after the proceeding  
16 here yesterday and I think you brought to my attention that  
17 they did not act on that recommendation.

18 Q That's right. In other words, it's your present  
19 testimony, displacing whatever you may have said yesterday,  
20 that the motion that passed by 3 to 1 by the County Commission  
21 was that they not then act on the recommendation of the blue  
22 ribbon committee.

23 A I will agree to that.

24 Q You pointed out that there was a fire at Baxter-  
25 Harriss and that the roof burned through, and then the water

1 poured in to put out the fire. Now that means that there  
2 were other materials that were burning -- the roof materials--

3 MR. CARR: Your Honor, I'm going to cut this  
4 short before the question is even asked. There was nothing  
5 in my cross examination this afternoon or yesterday afternoon  
6 that addresses that point. Mr. Riley may --

7 MR. GUILD: Let him finish the question, Mr. Carr.

8 MR. CARR: Why? It's a totally new subject well  
9 beyond my cross examination.

10 MR. RILEY: We have just been told that the thing  
11 the people were exposed to was sulfur dioxide, and it's  
12 perfectly obvious that in roofing material you have a whole  
13 batch of other materials in there, some of which are toxic  
14 and some of which are carcinogenic. Certainly, these could  
15 produce long-term effects on people and I want to find out  
16 whether Mr. Fincher is knowledgeable in this area, and  
17 whether there's been any follow-up with respect to the  
18 people who were exposed.

19 MR. CARR: Your Honor, that could have been asked  
20 yesterday when Mr. Ri'ey had the opportunity to cross  
21 examine --

22 MR. GUILD: Anything could have been asked yesterday.  
23 That doesn't answer the question of whether it's a proper  
24 question to ask now.

25 The fact of the matter is, Mr. Carr submitted through

1 his questions, Mr. Chairman, that there were no facts, and  
2 therefore, we should view the evacuation as effective. That  
3 seemed to interest you at the time Mr. Carr asked the  
4 question; it should be good enough for Mr. Riley to be able  
5 to respond to it on redirect.

6 JUDGE MARGULIES: Let's go right to it, Mr. Riley,  
7 and ask it directly.

8 BY MR. RILEY:

9 Q All right. Since there was the burning of other  
10 things than the sodium hydrosulfide --

11 A It was fite, not fide. Not i-d-e, but i-t-e.

12 Q Sodium sulfite. Would you agree that there were  
13 other things in the atomosphere than sulfur dioxide of a  
14 toxic nature?

15 A Of a toxic nature?

16 Q Yes, sir.

17 No, sir.

18 In other words, you're saying that the combustion  
19 products, wood, tar paper, whatever else was in that structure,  
20 are not toxic?

21 A They are toxic if you are in a confined space, but  
22 you had enough atmosphere on the outside that they would be  
23 diluted to the point where it would not be toxic. The  
24 roofing compound and ordinary wood is not a carcinogen.  
25 Paraquate is not a carcinogen.



1 Q EXcuse me, did you mean to say that the combustion  
2 proudcts are not carcinogens?

3 A No, sir, they are not. Not in any studies that  
4 I have done.

5 Q Smoke inhalation?

6 A Smoke inhalation doesn't create cancer from normal  
7 combustion products; it does from toxic products.

8 Q The hospital, of course, has a record of the people  
9 who were looked at, 100 people from the general public. Do  
10 you know if there has been any followup with respect to  
11 symptomatology at that time?

12 A The follow-up was with the 100 or so fire fighters.

13 Q T here has been no follow-up on the 100 members of  
14 the public?

15 A Idon't have any idea.

16 MR. RILEY: That's all.

17 JUDGE MARGULIES: If there's nothing further of  
18 the witness, you are excused. Thank you, sir, for coming  
19 back.

20 (Witness Fincher was excused.)

21 JUDGE MARGULIES: CAn you give us some idea, Mr.  
22 Guild, of how many witnesses you're going to have tomorrow?

23 MR. GUILD: It looks like it's going to be -- we  
24 have four witnesses, Judge.

25 JUDGE MARGULIES: Could you identify them?

1 MR. GUILD: Yes. Ms. Turnipseed, Betty Long,  
2 Linda Anderson -- it was Linda Smith on the subpoena --  
3 Brenda Best. Not in that order, Judge.

4 MR. MC GARRY. In addition, there's number 13,  
5 two Duke Power Company employees.

6 Now, we would maintain that it's not necessary to  
7 call them, given the rulings already on the Chernoff testimony.

8 JUDGE MARGULIES: I would like to advise the  
9 parties that we will be forced to conclude at 5:00 o'clock  
10 tomorrow in that there is a Shriner convention coming into  
11 town. There are no rooms available at the place where we  
12 are staying, and I understand that the reporters have the  
13 same problem.

14 We will conclude tomorrow at 5:00.

15 It's now 10 of 6:00. We will recess until  
16 tomorrow at 9:00 o'clock.

17 (Whereupon, at 5:50 p.m., the hearing in the above-  
18 entitled matter was recessed, to reconvene at 9:00 a.m.  
19 the following day.)  
20  
21  
22  
23  
24  
25

CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the  
NRC COMMISSION

In the matter of: Duke Power Company, et al


Date of Proceeding: Thursday, 7 June 1984

Place of Proceeding: Rock Hill, South Carolina

were held as herein appears, and that this is the original  
transcript for the file of the Commission.

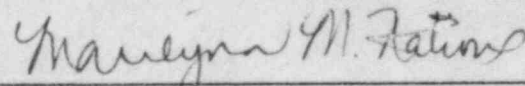
Mimie Meltzer

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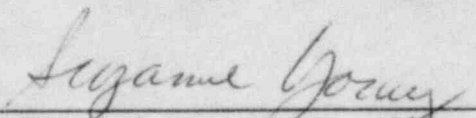
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Suzanne Young

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