

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: 2774 - 3079
Date: Tuesday, June 5, 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: :
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DUKE POWER COMPANY, et al., : Docket No. 50-413 OL
:
 : 50-414 OL
7 (Catawba Nuclear Station : ASLBP No. 81-463-06A OL
Units 1 and 2) :
8 :
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U.S. District Court
Old Post Office Building
Second Floor
Caldwell & Main Streets
Rock Hill, S.C.

Tuesday, 5 June 1984

Hearing in the above-entitled matter was convened,
pursuant to recess, at 9:05 a.m.

BEFORE:

MORTON B. MARGULIES, Chairman
Atomic Safety and Licensing Board

ROBERT M. LAZO, Member
Atomic Safety and Licensing Board

1 APPEARANCES:

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

3 J. MICHAEL MC GARRY, III, Esq.
4 ANNE W. COTTINGHAM, Esq.
5 Bishop, Liberman, Cook, Purcell & Reynolds
6 1200 Seventeenth Street, N.W.
7 Washington, D.C. 200368 ALBERT V. CARR, JR. Esq.
9 RONALD V. SHEARIN, Esq.
10 Duke Power Company
11 422 South Church Street
12 Charlotte, North Carolina 28242

13 On behalf of the NRC Staff:

14 GEORGE JOHNSON, Esq.
15 HENRY J. MC GURREN, Esq.
16 Office of the Executive Legal Director
17 U.S. Nuclear Regulatory Commission
18 Washington, D.C. 20555

19 On behalf of Intervenor, Palmetto Alliance:

20 ROBERT J. GUILD, Esq.
21 Post Office Box 12097
22 Charleston, South Carolina23 On behalf of Intervenor, Carolina Environmental
24 Study Group:25 JESSE RILEY
854 Henley Place
Charlotte, North Carolina 28207

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

1 APPEARANCES (Continued):

2 On behalf of T. Lafontine Odom:

3 MARVIN A. BETHUNE, Esq.
4 Ruff, Bond, Cobb, Wade & McNair
5 2100 First Union Plaza
6 Charlotte, No. Carolina 28282
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>VOIR DIRE</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
E. H. Harris, Jr.)	(Carr)	(Guild)	(Riley)	(McGarry)	(Riley)
)	2800	2809	2817	3031	3051
(Resumed))					
Bob E. Phillips)	(McGarry)		(Guild)	(Carr)	(Guild)
Lewis Wayne Broome)	2803		2928	3043	3061
William M. McSwain)			(Wilson)		
Stan D. Coleman)			2995		
P. R. Lunsford)			(Johnson)		
Phillip S. Thomas)			2999		

<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
Applicants' No. EP-21 (Applicants' Testimony on Emergency Planning Contention 8)	2809	2809
Applicants' No. EP-16 (Portion to be added to Exhibit EP-16 previously identified and received, and provided to reporter)	2809	2809
Applicants' No. EP-21A (Transmittal ltr 5/30/84 from Ms. Cottingham with Revised pp.6 and 6A of Harris/Pugh testimony in Appl. Exhibit EP-21)	2817	2817

P R O C E E D I N G S

1
2 JUDGE MARGULIES: On the record. This starts our
3 13th day of evidentiary hearings into emergency planning
4 involving the Catawba Nuclear Station.

5 Judge Hooper will not be with us for this session.
6 Do you have any preliminary matters this morning?

7 MR. BETHUNE: Your Honor, my name is Marvin Bethune.
8 I'm an attorney licensed to practice in the state of North
9 Carolina, and I served as the attorney for the Mecklenburg
10 County Board of Commissioners, and I've been asked by the
11 Chairman of that Board, Mr. T. Lafontine Odom, who is on a
12 list of witnesses to be subpoenaed, to file a motion on his
13 behalf to quash the subpoena which was issued by this Board
14 last week.

15 I mailed copies of the motion to all parties and
16 persons listed in the original application last Thursday,
17 and I believe that Mr. Riley and Mr. Guild have received that
18 either by mail or in some other fashion.

19 MR. GUILD: Your Honor, I have a copy.

20 MR. BETHUNE: And on behalf of T. Lafontine Odom,
21 I would respectfully request that the subpoena be quashed.
22 The regulations under which the subpoena had been issued allow
23 the Commission to quash or modify subpoenas if it is
24 unreasonable or requires evidence not relevant to any matter
25 or issue.

1 My motion reflects the fact that as Chairman of
2 the Board of Commissioners, Mr. Odom is scheduled to leave
3 the Charlotte Airport tomorrow at 11:30 and not return to the
4 city until 3:30 on June 8th, Friday, which I believe is the
5 last day you'll be hearing testimony on these matters. He has
6 been scheduled to go on this trip for some four months, and
7 is going in his capacity as Chairman of the Board of
8 Commissioners on an inter-city trip to Tulsa, Oklahoma where
9 he will be on the program.

10 I also call to your attention in the Motion to --
11 the statements which were made by Your Honor I believe last
12 Friday with respect to a request that a subpoena be issued to
13 the Governor of the State of North Carolina and a subpoena to
14 be issued to the Governor of the State of South Carolina, in
15 denying the request for those subpoenas, you noted that
16 high-ranking officers should not be called upon to give
17 testimony personally unless there was a clear showing that that
18 testimony is essential to prevent prejudice or injustice, and
19 that such high-ranking officials should not be required to
20 respond unless the testimony was unavailable from lesser-
21 ranking officials within their states.

22 I would contend that the same logic which was
23 applied in denying the request for subpoenas for the Governors
24 of the States of North Carolina and South Carolina is equally
25 applicable here, that there are persons present within this

1 courtroom now, Mr. Wayne Broome, from the Charlotte-
2 Mecklenburg Emergency Planning Office and Mr. Luther Fincher,
3 whom I believe has been subpoenaed to testify also, who is
4 the acting head of that office, would be available to give
5 the same testimony sought from Commissioner Odom.

6 The plan, which is in effect, the all-hazards
7 plan effective in Mecklenburg County, has been, in essence,
8 authored by the Office of the Charlotte-Mecklenburg Emergency
9 Planning Office, and the persons who have authored that plan
10 would be front line advisory people, and with respect to the
11 operation of it, Mr. Broome and Mr. Fincher.

12 I would attention to the fact that Mr. Odom,
13 although presently Chairman of the Board of Commissioners,
14 is certainly not always going to be in that office. His
15 term of office expires in December. He is seeking re-election
16 as a member of the Board of Commissioners. Of course, there
17 is no certainty that he will be re-elected, or if he is re-
18 elected to the Board of Commissioners that he will be
19 re-elected by his colleagues to be Chairman.

20 The plan provides what it provides, and I believe
21 the testimony with respect to what the emergency plans in
22 Mecklenburg provide is equally available from Mr. Broome and
23 Mr. Fincher.

24 JUDGE MARGULIES: I take it there will be no
25 opposition to the subpoenaing of Mr. Fincher.

1 MR. BETHUNE: No, sir. As a matter of fact, it's
2 my understanding that Mr. Fincher has been served. I spoke
3 with him yesterday afternoon. He has accepted service, and I
4 spoke with him personally yesterday afternoon and it's my
5 understanding that he intends to appear at whatever time on
6 the dates of the 6th, 7th or 8th that Mr. Guild would like
7 him to appear.

8 In addition, Mr. Broome is present here today and
9 I believe will also be present anytime during these three
10 days plus today if the Court or Mr. Guild would like him to
11 be present.

12 JUDGE MARGULIES: Do you wish to be heard,
13 Mr. Guild?

14 MR. GUILD: Yes, Mr. Chairman. We oppose the motion
15 to quash. You can only pass the buck down so far and so many
16 times. The fact of the matter is what's written on a piece
17 of paper in this plan is not proof positive of its capacity
18 for implementation. That is the issue in this proceeding.

19 It's one thing to have a facile author write a
20 plan that says so-and-so will do such-and-such in the event
21 of a serious accident at the Catawba facility. Proof,
22 however, we maintain, would be to the contrary; that those
23 charged with the responsibilities under the plan are incapable
24 of performing those responsibilities to effectively protect
25 the public who would be injured or killed in the event of

1 such an accident.

2 Part 3 of the North Carolina plan, that providing
3 the Mecklenburg County, at Subsection E entitled "Protective
4 Response", page 30, states specifically as follows: Item 2,
5 "Until SERT assumes control, the Mecklenburg Chairman of the
6 Board of County Commissioners will take the final
7 responsibility for ordering evacuation."

8 Now while it's true that Mr. Fincher and Mr. Broome
9 can well read from the plan and tell us what it contains and
10 perhaps explain to us what the basis is for their editorial
11 contribution to that plan, we submit that only Mr. Odom, who
12 presently holds the office specified in the plan, has the
13 capacity for testifying as to his knowledge with respect to
14 the ability to implement those responsibilities.

15 And it's true we made that same argument with
16 respect to the Governors, and we stand by the showing we
17 made there with respect to the prejudice that will flow to
18 this party from the unavailability of governors who are
19 charged with comparable responsibility.

20 But the point, again, is how far down can you pass
21 the buck. If the buck simply comes back down to the planners
22 who write the plan, who say that everyone will do what they're
23 supposed to do, there's no need for this hearing and this
24 Commission should have rubberstamped the written plan in the
25 first instance and not have required us to go through the

1 exercise in futility of trying to demonstrate that the plan
2 is incapable of implementation.

3 We are cognizant of Mr. Odom's conflicting obliga-
4 tions of schedule with respect to this Chamber of Commerce
5 trip. We maintain, of course, that fundamentally the
6 command of the Commission is to lay all business aside and to
7 make yourself available to testify, since testimony is the
8 highest calling in a proceeding of this sort.

9 We understand the Chairman to have made some passing
10 observation as to the availability of witnesses. If the
11 Chairman's remark is to be credited with the substantive
12 significance that Mr. Bethune attaches to it, it makes the
13 use of the compulsory process a dead letter. If it's simply
14 a question of saying I have other things to do, or I don't
15 care to appear because I'm unavailable for some other reason,
16 we presume all people are busy and they don't idle about
17 during the day, they have other things that they are required
18 to do.

19 The purpose of the compulsory process is to
20 require them to lay aside those duties and to appear.

21 I have spoken with counsel for Mr. Odom, and have
22 expressed an interest in trying to accommodate the gentleman's
23 schedule. I understand that without waiving their substantive
24 objection, which we contend is not meritorious, that Mr. Odom
25 would be available tomorrow morning prior to his required

1 appearance at the airport at 11:30, that perhaps during the
2 hours of 9:00 and 10:00 he'd be available. I also suggested
3 to Mr. Bethune that in order to accomodate the gentleman's
4 schedule, with the approval of the Board, we would be amenable
5 to working him in sometime today, particularly since his
6 primary testimony has to do with the subject of Contention 8,
7 which is what will occupy our time today.

8 So on the merits, Your Honor, we believe it is
9 essential to have Mr. Odom. We believe that even if required
10 to make a showing as to that -- requiring high government
11 officials, we've made that showing. We believe that nonetheless,
12 Mr. Odom is the essential person with responsibilities for
13 calling for evacuation under the plan. It's not simply
14 enough to say I'll leave it to my advisors or the experts.
15 We should be entitled to have the horse's mouth available to
16 tell us what he is capable of doing.

17 As to his unavailability, we believe that that is
18 not a substantial ground for avoiding due process of this
19 Commission, but that we would be more than willing to
20 accomodate his schedule, as suggested. We urge, therefore,
21 that the motion to quash be denied.

22 JUDGE MARGULIES: The motion is sustained.

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1 MR. BETHUNE: Your Honor, could I be heard with
2 respect to one factual matter to be presented during the
3 course of his argument?

4 JUDGE MARGULIES: Yes, you may.

5 MR. BETHUNE: He made reference to the Mecklenburg
6 All Hazards Plan, I believe with respect to what he believes
7 to be the absolute need to have Mr. Odom because of what he
8 says is Mr. Odom's function under that plan to call for an
9 evacuation during the first seven hours.

10 If you read through the plan and continue on, on
11 page 13 you will see a statement which is paragraph five
12 which reads, "The overall operational function of the Command
13 and Control function are the responsibility of the Chairman
14 of the Mecklenburg County Board of Commissioners. The
15 Chairman has delegated to the Mecklenburg County management
16 the authority to act on his behalf in all matters related to
17 and dealing with the operational aspects of Command and Control
18 in the conduct of emergency response actions."

19 Paragraph six says, "The Mecklenburg County
20 manager utilizes the County EOC staff to carry out the
21 function of overall Command Control and other functions for
22 which the Chairman of the Mecklenburg County Board of
23 Commissioners is responsible."

24 So it is not absolutely correct to say that Mr. Odom
25 carries the sole burden of determining whether or not an

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1 evacuation would be carried or what other actions might be
2 taken during the first seven hours before CERT gets there.
3 There are a number of back-up staff professionally trained
4 who would be available not only to consult with him but to
5 actually make the decisions because of this delegation which
6 is contained in the plan.

7 I really do not believe that it would be necessary
8 for Mr. Odom to be here to testify to what is in the plan
9 any more than it is necessary to bring in every single
10 individual who might sometime at the present or in the
11 future be called upon to make a decision.

12 MR. GUILD: Mr. Chairman, Mr. Bethune ably makes
13 our point. He cites the all-hazard plan and that is not
14 what I was reading from. Ironically what I read from is
15 the North Carolina State Plan for the Catawba facility that
16 is in evidence in this proceeding.

17 It is indeed ironic that the reference that counsel
18 makes supports our contention that there is confusion and
19 contradictory assignments of responsibility. We maintain that
20 the plan says Mr. Odom is in charge of evacuation notwithstand-
21 ing what some conflicting document might say. That is all the
22 more reason to have the gentleman appear and respond to how
23 this apparent conflict is to be resolved in the implementation
24 of an emergency plan at Catawba.

25 (Board conferring.)

MR. MCGARRY: If we may be heard for a moment

1 just so the record reflects, we support Mr. Bethune's motion
2 to quash for the reasons stated. We think that Mr. Odom
3 should benefit from case law and recognizes that high
4 government officials are extended some courtesies and some
5 recognition of their responsibilities. He is the Chairman
6 of a county commission which embraces a population of
7 approximately 400,000 people. He has many responsibilities.

8 Second of all, the motion made clear that he
9 is about on county business. It is not a personal trip that
10 he is on and that should be afforded some recognition.

11 Thirdly, as this Board recognizes Mr. Broome has
12 ably presented Mecklenburg County position and has been
13 cross-examined for days and will be cross-examined again
14 today. He is the cognizant official of the emergency plan
15 for Mecklenburg County and we believe fulfills any responsibil-
16 ity that Mecklenburg County might have in bringing pertinent
17 information to this proceeding and to call Mr. Odom would
18 simply be an additional burden on this record.

19 MR. MCGURREN: Your Honor, the Staff also supports
20 the motion to quash. We have nothing to add just that we
21 support it.

22 (Board conferring.)

23 JUDGE MARGULIES: The Board will grant the motion
24 to quash. We are satisfied that Mr. Odom has a bona fide prior
25 commitment on official business. We believe that Mr. Luther

1 Fincher who is actually Mr. Broome's supervisor should be
2 capable of providing the necessary information.

3 MR. GUILD: Mr. Chairman, the record should reflect
4 that the witness is available before his scheduled departure
5 tomorrow and we assert that his so-supposed unavailability is
6 not a bar to his appearance during the period tomorrow morning
7 between the hours of nine and ten. We believe we have a right
8 to have him available for whatever questions are necessary
9 and we believe that is established through the pleading and
10 my communication with counsel that the gentleman is available
11 during a portion of that time and without waiving our position
12 that he should be made available generally, we assert that he
13 should be clearly made available during the time at which he
14 would be present in the jurisdiction and that is between the
15 hours of nine and ten tomorrow morning.

16 I would just suggest, Mr. Chairman, that in
17 countless other proceedings on emergency planning matters the
18 principal of persons responsible for implementation of the
19 plan of being necessary and proper witnesses to support the
20 capability of its implementation is well-established and the
21 notion somehow that staff people are the universal substitute
22 for persons who have responsibilities under the plan, I know
23 of no support for that except in the arguments that counsel
24 made.

25 It simply has not been the practice in reviewing the

1 adequacy of the implementation of other emergency plans. The
2 number of people that we now have available to us given the
3 Board's position is fast eroding to the point where it is an
4 exercise in meaningless futility to simply have Mr. Broome
5 tell us more time that he trusts that everything will work out
6 just fine.

7 In other emergency planning proceedings there have been
8 up over 60 local officials who have been presented, testified and
9 responded to how they understood their task would be accomplished
10 under implementation of the plan and somehow magically though
11 that evidence is being made unavailable to us in this proceeding.
12 It is simply unfair and unjust and really puts this party in
13 an a very, very difficult position to try with what meager
14 testimonial evidence is being made available to prove our
15 case.

16 We believe it is clearly erroneous, Your Honor, and
17 I strenuously press the point that we deperately need local
18 implementing officials and we believe that Mr. Odom is
19 available and should be required to appear.

20 JUDGE MARGULIES: Mr. Fincher is described in your
21 petition of May 16, 1984 as being in charge of planning,
22 organizing and coordinating emergency response for the county
23 and city.

24 MR. GUILD: That is their description, Mr. Chairman.

25 JUDGE MARGULIES: That is your description.

1 MR. GUILD: No, sir. That is my quotation of what
2 the Applicant asserts to be that gentleman's position. I make
3 no representation that he is, in fact, capable of performing
4 those responsibilities. I only assert that that is what they
5 say he is supposed to do under the plan. The plan may be magic,
6 Mr. Chairman, but it is not self-implementing. The fact that
7 the words are on paper does not mean that people's health and
8 safety is going to be protected in the event of an accident.

9 JUDGE MARGULIES: I suggest that you read your
10 description of Luther Fincher in your motion.

11 MR. GUILD: Mr. Chairman, I stand by the position I
12 just stated. That is, I have no independent knowledge of what
13 Mr. Fincher's job is or what he does in the event of an
14 accident. All I know is what Applicant and the plan say about
15 him, sir. He may be a fine gentleman but he is not charged
16 with responsibility for ordering evacuation of Mecklenburg
17 County. Mr. Odom is and that is why we need his testimony in
18 part.

19 JUDGE MARGULIES: That Board stands on its ruling.

20 MR. RILEY: Mr. Chairman, it is simply that in the
21 process of discovery we have seen the word "order" displaying
22 the witness for Mecklenburg County whom I believe is Mr. Broome
23 and the word that he uses consistently in response to our
24 discovery questions is "recommend." The language in the North
25 Carolina plan with respect to the Board of County Commissioners

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1 is that person will obtain the final responsibility for
2 ordering evacuation and I think that part is quite clear.
3 That is page 30, (e), protective response, item two.

4 I would like to further add that I think the
5 scheduling problem could be worked out because if the Board
6 feels that it would be an unnecessary burden on Mr. Odom to
7 rush him out here tomorrow morning just prior to his plane,
8 I can see that. On the other hand, he could certainly appear
9 this afternoon. As attorney Guild has pointed out his
10 testimony would be with regard to contention "8" and would be
11 quite compatible with the business before the Board.

12 (Board conferring.)

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JUDGE MARGULIES: The Board's ruling remains unchanged.

MR. BETHUNE: Your Honor, we appreciate your courtesy in hearing us this morning. Thank you.

JUDGE MARGULIES: We will now proceed with the panel on Contention 8.

MR. MC GARRY: Yes, sir.

At this time we call our witnesses on Contention 8. I would like the record to reflect also, Mr. Broome also available for cross examination on Contention 18. He was not with the panel because of a commitment, but we had an understanding at that time that we would make him available.

MR. GUILD: Mr. Chairman, before we leave this point, I understood -- just to protect the record because I intend to press this matter -- I understood the Chairman to make a comment on the record at the last proceeding as to the issue of availability.

It is our position that if Mr. Odom is to be excused because of his prior commitment, that he should be required to appear at a later time. I understood the Chair's disfavor with the notion of any additional further proceedings in this matter. Notwithstanding that view, we want Mr. Odom's testimony and anticipating that everybody on the rest of the list is likely to come in with similar excuses of unavailability which make our access to the compulsory process

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1 just meaningless, we ask that Mr. Odom be required to appear
2 at the next time when he is available.

3 Now I understand, sir, from Mr. Bethune, that
4 Mr. Odom will be in Charlotte come Friday afternoon, and that
5 therefore he is likely to be available next week. Now I
6 would ask that Mr. Odom be required to appear and testify
7 at the next available time for him, sir -- whatever judgment
8 you want to attach to the qualitative aspects of availability
9 -- whenever he is next available as you view that term,
10 your Honor, we would ask that he be required to appear and
11 testify.

12 His testimony is critical to our presentation, sir.

13 JUDGE MARGULIES: Let the record reflect that
14 Mr. Bethune is no longer in the courtroom, he has left the
15 courtroom, prior to --

16 MR. GUILD: If that is a determinative factor,
17 Mr. Chairman, if we may stand adjourned briefly I will see
18 if I can find counsel for the witness so that he can speak
19 to this issue. It was simply an oversight on my part. In
20 an effort to try to protect the record from what is now,
21 its eroding condition, to raise this point now, sir, as
22 quickly as I could.

23 But, if Mr. Bethune's presence is determinative
24 may we stand down so I can go find the gentleman?

25 JUDGE MARGULIES: It isn't necessary. The Chair

MMmr:3 1 and the Board maintains its ruling. The subpoena has been
2 quashed, and Mr. Odom need not appear in this proceeding.

3 MR. GUILD: At any time?

4 JUDGE MARGULIES: At any time.

5 The proceeding is to be completed by Friday.

6 MR. GUILD: Thank you, Mr. Chairman.

7 MR. MC GARRY: Your Honor, at this time we call
8 our panel on Contention 8, plus Mr. Broome on Contention 18.
9 Gentlemen, will you please take the stand.

10 Your Honor, all of the gentlemen have been sworn
11 with the exception of Mr. Harris. Mr. Pugh will not be
12 available today. He has conflicts in his schedule. The
13 Governor has called upon him for certain duties, but the
14 testimony will reflect that both Mr. Harris and Mr. Pugh
15 sponsor that testimony, and Mr. Harris is here to sponsor the
16 State of North Carolina's testimony.

17 MR. GUILD: Mr. Chairman, that is just not
18 acceptable. We are now losing the other officials who are
19 identified as being responsible under the North Carolina Plan.
20 You eliminated the Governor, who is charged with responsibility
21 and told us Mr. Pugh would be here in his stead. Now we are
22 being told Mr. Harris, another lower level staff official
23 should be acceptable to us in Pugh's stead.

24 The buck again, can only be passed down so far,
25 Mr. Chairman. We would ask that Mr. Pugh's testimony, if it

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1 is not capable of sponsorship by Mr. Pugh, be stricken.

2 MR. CARR: Mr. Guild, if you will look at the
3 testimony, you will see that the entire testimony is sponsored
4 by Messrs. Pugh and Harris. Each answered to each question.

5 MR. GUILD: Then let the record reflect that it
6 is only Mr. Harris that sponsors the testimony, Mr. Chairman,
7 and not Mr. Pugh.

8 JUDGE MARGULIES: Yes, that should be reflected
9 in the record, and where it shows Mr. Pugh is sponsoring
10 the testimony, it should be stricken.

11 And, if Mr. Harris can't support the testimony,
12 his testimony, too, will be stricken and if need be, Mr. Pugh
13 will have to come back if you want to get that testimony in
14 the record.

15 MR. MC GARRY: We would ask that Mr. Harris be
16 sworn, your Honor. The rest of the witnesses have previously
17 been sworn.

18 Whereupon,

19 E. H. HARRIS, JR.

20 was called as a witness, and having been first duly sworn,
21 was examined and testified as follows:

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1 Whereupon,

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STAN D. COLEMAN, JR.
P. R. LUNSFORD
WILLIAM M. MC SWAIN
BOB E. PHILLIPS
LEWIS WAYNE BROOME
PHILLIP STEVEN THOMAS

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resumed the stand, and having been previously duly sworn,
were further examined and testified as follows:

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MR. CARR: Your Honor, before I begin with
certain of the witnesses, I would like to point out that by
letter of May 30, 1984, Applicants served a revised page 6
of the testimony of Mr. Pugh and Mr. Harris on the Parties.

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It consists of two pages attached to the letter.
The first page is numbered 6, and the second is numbered page
6A. As pointed out in the letter from Ms. Cottingham, the
amendment to the testimony is in the nature of clarification
and rather than go through a question and answer and try to
get it straightened out, I would suggest simply that 6 and 6A
be inserted into their testimony to replace the existing
page 6.

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MR. GUILD: Mr. Chairman, we would object. The
testimony -- does the Chair have a copy of the proposed
revision to the gentleman's testimony?

JUDGE MARGULIES: Yes, I do.

MR. GUILD: All right, sir.

This is not simply a typographical error; it is
not simply a clarification. This represents a substantive

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1 change in the testimony that comes May 30th, 1984 -- by
2 cover of that date, received thereafter -- received since
3 the witnesses last left the witness stand and before they
4 now reappear. And goes to exactly the point that we have
5 been so, with such difficulty, trying to press to this
6 Board. And that is, who among the confusing array of
7 assigned responsibilities is in charge in the event of a
8 need to call for protective action?

9 This change so innocently described by counsel
10 addresses the -- one of the obvious points of confusion and
11 lack of clarity, and that is the incredible assertion in the
12 gentleman's original testimony that the State authorities have
13 the legal power, if you will, to order an evacuation in a
14 timely fashion, timely sufficient to provide effective
15 protective action. That is the sum and substance of the
16 original page 6. Only time-dependent variable would be
17 communication with the Governor, et cetera, et cetera.

18 Now, the correction as I read it, goes to what
19 appears to be a rather, to us, impractical and arduous
20 process that we believe is called for by state law. That
21 has been our position from the outset of this proceeding;
22 that the magical assertion that this could all be accomplished
23 in time to take effective protective action simply won't wash
24 in practice. And, in part, that is because state law says
25 very specifically that in North Carolina the Governor has

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1 to follow a specified process established by state statute
2 for declaring a state of disaster, after consultation with
3 his Council of State, a body comprised of other senior
4 officials of the state who may be in various diverse locales
5 at any given point in time; requirements for filing and
6 publication of such orders; and ultimately an order for
7 evacuation that we maintain might only come days after it
8 is necessary.

9 It is simply improper to have Applicants by
10 correction or clarification, as they maintain, making a
11 substantive amendment to testimony in the fashion that they
12 have.

13 They have a filing obligation, as you so often
14 urge on us, of April 16, 1984. If their testimony was not
15 properly filed then, then it should not be received there-
16 after. We maintain that the confusion as to assignments of
17 responsibility and capability of implementation is manifest
18 in the original testimony and whether the correction clarifies
19 or cures the deficiency, I won't take a position on.

20 But, if it is an attempt to clarify or remove
21 this inconsistency, we think it comes too late and it should
22 not be received.

23 MR. CARR: Your Honor, two points.

24 The first is that it is a clarification. Mr. Guild
25 is confusing the testimony that is already in the record from

mm8

1 Mr. Pugh of Tuesday, May 8, at page 1419. The problem comes
2 with the difference in terminology between "order" and
3 "compel." It is a clarification of the situation that
4 exists in North Carolina.

5 Second, we took it on ourselves to hand deliver
6 this proposed amendment to the Board. We Express Mailed it
7 to the Parties. They were not faced with the situation
8 that we were faced with when Mr. Twerry got up on the stand
9 and substantively changed his testimony. They were not
10 faced with the situation we were faced with when Mr. Riley
11 spent almost an hour correcting his testimony.

12 There has been notice -- they have had this since
13 last week. Now we submit and move that it be accepted as an
14 amendment to the prefiled testimony and that we proceed with
15 this panel.

16 (Board conferring)

17 JUDGE MARGULIES: The Board will permit the two-
18 page statement into the record, but not in substitution of
19 the original page 6. The original page 6 will stand in the
20 record, and page 6 and 6A can be marked as a subsequent
21 exhibit to indicate the contended clarification.

22 MR. GUILD: Thank you, Mr. Chairman.

23 Did the Chair view that it should be marked as an
24 exhibit?

25 JUDGE MARGULIES: Both of them will have to be

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1 marked as an exhibit. Neither has been marked. And I
2 anticipate counsel will do that shortly.

3 MR. CARR: Yes. If I could now, your Honor, I
4 would like to address these questions to Mr. Harris,
5 Mr. Phillips and Mr. Broome.

6 DIRECT EXAMINATION

7 BY MR. CARR:

8 Q Mr. Harris, let me ask you, sir, do you have
9 in front of you a document entitled, "Testimony of the
10 State of North Carolina (E.H. Harris, Jr. and J. T. Pugh, III)
11 on Emergency Planning Contention 8"?

12 A (Witness Harris) Yes.

13 Q At this time, Mr. Harris, do you have any
14 additions or corrections beyond those set forth in the letter
15 that we just discussed, to make to that testimony?

16 A Just one on page 7.

17 Page 7, line 7: "We have also conducted a joint
18 exercise." Change it from plural to singular.

19 Q Do you have in front of you, Mr. Harris, a letter
20 dated May 30, 1984, signed by Ms. Cottingham, transmitting a
21 revised page 6 to that document to the Board and Parties in
22 this proceeding, and attached to that is two pages which are
23 the revision to the testimony?

24 A Yes.

25 Q And do you have any corrections to make to that

mm10±

1 A No.

2 Q If I were to ask you, Mr. Harris, the questions
3 that are set forth in those two documents, if I were to ask
4 you those today, would your answers be the same as set forth
5 therein?

6 A Yes, they would.

7 Q Were those documents prepared by you or under your
8 supervision?

9 A Yes, they were.

10 Q Do you adopt those documents as your testimony in
11 this proceeding?

12 A Yes, I do.

13 Q Mr. Phillips, do you have in front of you a
14 document entitled, "Testimony of Gaston County (Bob E.
15 Phillips) On Emergency Planning Contention 8"?

16 A (Witness Phillips) Yes.

17 Q Do you have any additions or corrections that
18 you wish to make to that document?

19 A No.

20 Q Was the document prepared by you or under your
21 supervision?

22 A Yes.

23 Q If I were to ask you the questions set forth
24 therein, would your answers be the same?

25 A Yes.

nm11
1 Q Do you adopt that document as your testimony in
2 this proceeding?

3 A Yes.

4 Q Mr. Broome, do you have in front of you, sir, a
5 document entitled, "Testimony of Mecklenburg County (Lewis
6 Wayne Broome) On Emergency Planning Contention 8"?

7 A (Witness Broome) I do.

8 Q Do you also have in front of you a document
9 entitled, "Testimony of Mecklenburg County (Lewis Wayne
10 Broome) On Emergency Planning Contention 18"?

11 A I do.

12 Q Do you have any additions or corrections that you
13 wish to make to those documents at this time?

14 A There is no correction on Contention 8.

15 There is one correction on Contention 18.

16 MR. GUILD: Mr. Chairman, would the witness wait
17 a moment.

18 JUDGE MARGULIES: Yes.

19 MR. GUILD: Thank you, sir.

20 (Pause)

21 MR. CARR: Go ahead now.

22 WITNESS BROOME: Change in reference to Contention
23 18 is on page 2 where it reads, "If the Mecklenburg County
24 EOC -- "

25 MR. GUILD: Give us a line, please.

mm12

1 WITNESS BROOME: Line 1. It reads, "If the
2 Mecklenburg County EOC." Change that to read, "The
3 Mecklenburg County EOC will be activated at the alert stage,"--
4 the word "and" change that and insert "if".

5 That is all the corrections I have.

6 BY MR. CARR:

7 Q The documents were prepared by you or under your
8 supervision?

9 A (Witness Broome) That is correct.

10 Q And if I were to ask you the questions set forth
11 therein, would your answers be the same?

12 A They would.

13 Q And you adopt these documents as your testimony
14 in this proceeding?

15 A I do.

16 MR. MC GARRY: I will address the questions to
17 Mr. Coleman, Mr. Lunsford, Mr. McSwain and Mr. Thomas.

XXX

18 BY MR. MC GARRY:

19 Q Gentlemen, do you have your testimony on Emergency
20 Planning Contention No. 8 before you?

21 A (Witness Coleman) Yes.

22 A (Witness Lunsford) Yes.

23 A (Witness McSwain) Yes.

24 A (Witness Thomas) Yes.

25 Q Do any of you gentlemen have any corrections to

mm13

1 make to that testimony?

2

Mr. Coleman?

3

A (Witness Coleman) I do.

4

Q Please go ahead and explain that correction.

5

A Page 2 of my testimony, line 12 should read,

6

"communications to, from, and among the following locations."

7

Q So you would strike the word "and," is that

8

correct?

9

A Yes.

10

Q And make the corrections as you stated.

11

Do you have any further corrections?

12

A Yes. Page 2, line 19, I strike the word "and;"

13

page 2, line 20 should read as follows: "Station - WBCY

end T3

14

Radio; and (g) being a center in Charlotte."

15

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1 Q Do you have any other additions or corrections?

2 A Yes. Two others. Page 3, line 6 should read,
3 "and July 1, 1984, and the one at the Media Center at
4 Charlotte..." --

5 Q Go slower, please. "...and the one at the..." --

6 A "...Media Center in Charlotte which will be
7 installed no later than September 1, 1984."

8 Q Do you have any other additions or corrections?

9 A No, that's all.

10 Q Mr. McSwain, do you have any additions or
11 corrections to your testimony?

12 A (Witness McSwain) Yes, I do.

13 Q What are they, sir?

14 A On page 3, line 7, strike the words "The state"
15 and insert "Duke Power Company." Further on in the line,
16 strike the word "accident" and insert the word "emergency."

17 Q Any other corrections or additions?

18 A Page 4, line 9, strike the word "SEOC" and insert
19 the word "FEOC."

20 Q Any others?

21 A Page 8, line 13, strike the words "two North
22 Carolina Counties and the" --

23 MR. GUILD: Mr. Chairman, before the witness goes
24 forward, the correction on page 4, --

25 MR. MC GARRY: On line 9, SEOC should read FEOC.

1 MR. GUILD: May I just ask a clarification so that
2 I can prepare for cross examination? Is the significance
3 that the director is not in Columbia and he is instead at
4 the FEOC? Could I ask the witness that question?

5 JUDGE MARGULIES: I have no problem. Can the
6 witness answer?

7 WITNESS MC SWAIN: Would you restate the question?

8 MR. GUILD: Is the significance that the director
9 is in Clover at the FEOC and not in Columbia?

10 WITNESS MC SWAIN: He would be in Clover.

11 BY MR. MC GARRY:

12 Q Any further corrections, Mr. McSwain?

13 A (Witness McSwain) No, sir.

14 Q Mr. Lunsford, any corrections to your testimony?

15 A (Witness Lunsford) I have no additions, and I
16 subscribe to those made by Mr. McSwain.

17 Q Mr. Thomas?

18 A (Witness Thomas) No, sir.

19 A (Witness Lunsford) I would add, since Mr. Guild has
20 brought it up, regarding the decisionmakers, that you'll notice
21 the parenthetical phrase there on line 8, page 4, who
22 customarily would be the director, not saying the director
23 if incapacitated would have designated his deputy or assistant
24 to be a deputy.

25 Q In other words, it would be the director or someone

1 . his stead, is that correct?

2 A Yes, who would then act as the director.

3 Q Do you have anything further to add, Mr. Lunsford?

4 A No.

5 Q Mr. Thomas, any corrections or additions to your
6 testimony?

7 A (Witness Thomas) Yes, I do. Page 4. Line 3,
8 starting with June 1 in place of July 1.

9 Lines 12 and 13 should be stricken.

10 MR. JOHNSON: Could you say it again? I'm sorry.

11 WITNESS THOMAS: Going back to line 3, replace
12 June 1 with July 1. Page 4.

13 Strike lines 12 and 13 in their entirety.

14 BY MR. MC GARRY:

15 Q Any further additions or corrections?

16 A (Witness Thomas) Yes, sir. Line 22 on page 4
17 strike April 1984 and replace it with July 1, 1984.

18 Q Anything further, Mr. Thomas?

19 A No, sir.

20 Q Gentlemen, as corrected, do you adopt your
21 testimony concerning Emergency Planning Contention 8 as your
22 testimony for use in this proceeding?

23 A (Witnesses Harris, Phillips, Broome, McSwain,
24 Coleman, Lunsford and Thomas) Yes.

25 Q And if I were to ask you the questions set forth

1 in the testimony today, would you provide the same answers
2 that are set forth in the testimony?

3 A (Witnesses Harris, Phillips, Broome, McSwain,
4 Coleman, Lunsford and Thomas) Yes.

5 MR. MC GARRY: Your Honor, at this time, we would
6 request that Applicant's Testimony on Emergency Planning
7 Contention 8 be marked for identification as Applicant's
8 Exhibit EP-21 and that the May 30th, 1984 letter which has a
9 two-page attachment to it, that letter was signed by Anne W.
10 Cottingham and has been sent to the Board and parties. We
11 request that that be marked for identification as Applicant's
12 Exhibit EP-21A. And we ask that they be received in evidence.

13 In addition, with respect to Mr. Broome's testimony
14 concerning Contention 18, Contention 18 testimony has, indeed,
15 been received into the record as evidence, as Applicant's
16 Exhibit EP-16 and we can simply leave it at that with the
17 understanding that Mr. Broome's testimony on Contention 18
18 is included in Applicant's Exhibit EP-16. If there's no
19 objection we would stand on that.

20 So the only thing that we are now moving is that
21 Applicant's EP Exhibits 21 and 21A be received into evidence,
22 and that Applicant's Exhibit EP-16 reflect the inclusion of
23 Mr. Broome's testimony.

24 MR. GUILD: No objection to EP-21, the prefiled
25 testimony-in-chief being marked and received subject to cross

1 examination, nor to Mr. Broome's being included as part of
2 EP-16, the general testimony on Contention 18.

3 We would seek an opportunity to voir dire as to
4 the admissibility of EP-21A, and that is the clarification
5 testimony of Mr. Harris.

6 JUDGE MARGULIES: Any objection?

7 MR. MC GARRY: No objection, Your Honor. Perhaps
8 if we could admit 21A at this time subject to any motions
9 to strike Mr. Guild wishes to make after voir dire or whenever.

10 JUDGE MARGULIES: We will admit EP-21 and EP-16
11 in its entirety, and you may voir dire on 21A.

12 (The documents referred to were
13 marked Applicant's Exhibit EP-21
14 and EP-16 for identification, and
15 were received in evidence.)

16 VOIR DIRE

17 BY MR. GUILD:

18 Q Mr. Harris, did you prepare your original testimony,
19 that portion in particular that appears at page 6?

20 A (Witness Harris) As I earlier stated, it was
21 prepared under my supervision along with Mr. Pugh's.

22 Q Who actually prepared it, sir?

23 A The staff.

24 Q Who, by name and title, if you would, please.

25 A The staff members on the staff. There were a

1 number of people working on it. We had a number of people
2 working on all of these contentions.

3 Q Ten, 20, 30? One or two?

4 A I don't recall, Mr. Guild, but it was a considerable
5 number of people.

6 Q Do you know who prepared the testimony?

7 A I know who worked on the testimony, yes, sir.

8 Q If there's an important distinction between working
9 on it and preparing it, I'd be interested in knowing what
10 that is. Who prepared the testimony?

11 A Well, members of the staff prepared the testimony.
12 It was broken down -- there might have been several people
13 working on the whole thing -- question by question. I don't
14 know what the breakout would be.

15 Q Well, I'm asking you specifically with reference to
16 the questions that appear in your original pages 6 and 7.
17 Who prepared that testimony?

18 A I do not recall, Mr. Guild.

19 Q Did you review it?

20 A Yes.

21 Q Did you approve it?

22 A Yes. It needed clarifying.

23 Q Did you clarify it prior to approving it?

24 A I don't follow. It just seems to me that the
25 pages entered in the record this morning included pages that

1 clarified the difference between order and compel. We wanted
2 to make sure that you understood that in order to compel
3 evacuation the Governor had to have concurrence of the counsel
4 of state; the Governor can order evacuation on his own.

5 Q Well, is that a change in policy, a change in
6 governors, a change in law, a change in any material fact that
7 occurred between the time you approved your testimony prior to
8 submission on April 16, 1984 and the time that the clarifica-
9 tion appeared to be warranted and was made?

10 A Just for clarification.

11 Q All right, sir. Do you stand by your testimony as
12 it was originally submitted?

13 A I stand by the testimony as it was revised.

14 Q You don't stand by it as it was originally submitted?
15 It wasn't true, complete and accurate at the time you submitted
16 it originally?

17 A It's clearer now than it was before, Mr. Guild.

18 Q How about just answering the question yes or no?
19 I appreciate you want to clarify, but was it true, complete
20 and accurate at the time you originally submitted it, sir?

21 A At that time I thought it was clear.

22 Q Now then, how about telling me what the basis was
23 for the clarification?

24 A We just noticed that it would be clearer if there
25 were more said about it, and an effort was made to clarify

1 the order and compel.

2 Q And how did you come to notice that, Mr. Harris?

3 A I don't recall, Mr. Guild. You could ask Mr. Pugh
4 that, I don't really recall.

5 Q Well, did you talk to Mr. Pugh about the subject?

6 A Yes.

7 Q When did you do that?

8 A I don't recall. It was one day in the courtroom
9 here, Mr. Guild.

10 Q So it was after the proceedings began?

11 A Yes.

12 Q It was after you heard testimony from Mr. Pugh?

13 Did you give some testimony yourself, Mr. Harris?

14 A No, I didn't hear Mr. Pugh testify about this.

15 Q Had you heard Mr. Pugh testify at all?

16 A Yes.

17 Q So he already appeared as a witness in the
18 proceeding, correct?

19 A Mr. Pugh has.

20 Q Yes. Now, do you recall any part of the basis for
21 making the correction, Mr. Harris? Or is it your position
22 you just don't remember?

23 A It just needed clarifying.

24 Q How did it come to your attention that it needed to
25 be clarified?

1 A Well, as I mentioned just a moment ago, in
2 conversation between Mr. Pugh and myself. I don't recall how
3 it came up or in what context it came up. We just felt like
4 it needed clarifying.

5 Q Can you relate to me the substance of the
6 conversation, please?

7 A I don't really recall, other than the fact that
8 this part of the testimony needed to be clarified, and we
9 needed to make clear the difference between order and compel.

10 Q I'm going to ask you about that in a moment. But
11 what happened after you reached -- after you had this talk
12 about the need to clarify? What did you do?

13 A Mr. Pugh said that we had to clarify it at that
14 point, and I dropped it. And I was sure that it would get
15 clarified, that the words on these two pages were sufficient
16 to clarify the matter.

17 Q Well, what I'm sort of curious about is that it is
18 Mr. Mc Garry's law firm that did the clarifying, Mr. Harris;
19 it wasn't you and it wasn't Mr. Pugh. It's the lawyer for
20 Duke Power Company that did the clarifying. And what I'm
21 interested in at this point is you and Mr. Pugh talked about
22 the matter. How did it come to having Ms. Cottingham, for
23 Applicant, Duke Power Company, clarify the responsibilities
24 and roles of the Governor of North Carolina with respect to
25 ordering an evacuation or compelling an evacuation?

1 MR. CARR: Your Honor, I will object to that
2 question. That seems to me to be a ridiculous point. We
3 served this on the parties the same way we served all the
4 testimony in the case on the parties.

5 I think if you'll look at the original submittal,
6 it was served -- the entire stack of testimony was served on
7 all parties with a cover letter signed by either Mr. Mc Garry
8 or myself, or maybe Ms. Cottingham or maybe Mr. Calvert.

9 MR. GUILD: I never maintained otherwise, Mr.
10 Chairman, it's obviously Duke lawyers who are submitting the
11 testimony of these officials; they're sponsoring their
12 testimony. So what?

13 My question is how did it come to pass that the
14 lawyers for Applicants who want a license for this nuclear
15 plant, who want to maintain the plans are adequate, came to
16 make the clarification that we've been talking about.

17 BY MR. GUILD:

18 Q Can you tell me?

19 A (Witness Harris) Is that a question?

20 Q Yes, sir.

21 A Please rephrase it.

22 Q Sure. How did the lawyers, your lawyers, the
23 lawyers for Duke Power Company, come to make this clarification,
24 this change in your testimony?

25 A Well, the lawyer for Duke Power Company is not my

1 attorney. I discussed the change or clarification with
2 Mr. Pugh and from that point on, I can't tell you how the
3 change came about. But I would assume that he spoke to
4 Mr. McGarry and told him what was necessary.

5 Q You don't know that of your own knowledge?

6 A No, I don't.

7 Q And as far as you know, all that happened -- you
8 talked about this with Mr. Pugh, and the next thing you know
9 is you're being shown a document and asked whether it's your
10 testimony, and you say you concur in it?

11 A I concur in it because I know it's accurate.

12 MR. GUILD: That's all I have, Mr. Chairman, thank
13 you.

14 MR. RILEY: Mr. Chairman, may I join in voir dire?

15 JUDGE MARGULIES: You may.

16 BY MR. RILEY?

17 Q In the original page 6, line 3, there's a question,
18 "With whom must they consult before doing so?" Which is,
19 clearing a disaster by the governor. Is that correct?

20 A (Witness Harris) Yes.

21 Q And line 4 reads, "They must consult with counsel
22 for state." Now, if you take a look at the clarifying
23 testimony there's a question on line 2, "With whom do state
24 officials consult before ordering evacuation." The answer
25 is, "There is no requirement that they consult with anyone."

1 A That's why the clarification was necessary. The
2 Governor can order evacuation without consulting anyone.
3 That's why the clarification was necessary. It's only when
4 the Governor wants to compel evacuation that he must consult
5 with the counsel of state.

6 Q The subject was the declaration of a disaster,
7 wasn't it? Line 2 of your original testimony, page 6.

8 (Pause.)

9 A Yes. The question was, "Do state officials have
10 the authority to order evacuation or other protective action,"
11 and the answer is yes. After the Governor declares an
12 emergency he can order evacuation without consulting anyone.

13 If he wants to compel evacuation, then he must
14 consult with the counsel of state.

15 Q Can you tell us the distinction between order and
16 compel?

17 A Yes. It's as I just stated, and I will restate it.
18 Once the Governor has declared an emergency, he can order an
19 evacuation without consulting anyone. If he wants to compel
20 evacuation, in other words, force people to leave their homes,
21 then he must have -- he must consult with the counsel of state.

22 Q It's your testimony then that an order may be
23 disobeyed, but a compulsion is physical and it can't be
24 disregarded?

25 A My interpretation of that would be that the

1 Governor can order an evacuation. Once he has ordered, if
2 people decide not to leave their homes, he cannot force them
3 to leave their homes. But if the Governor consulted the
4 counsel of state, then he can compel or force people to leave
5 their homes.

6 Q Through the National Guard, say?

7 A Whatever means of necessary force is available.

8 MR. RILEY: Thank you.

9 JUDGE MARGULIES: We will proceed with cross
10 examination as we have done in the past. The time starts
11 to run now on cross examination.

12 MR. MC GARRY: Your Honor, at this time I would
13 request that Applicant's Exhibit 21-A be received in evidence
14 subject to any move to strike that the Intervenors may make.

15 JUDGE MARGULIES: Any objection?

16 MR. GUILD: We maintain the same position with
17 respect to its admissibility as previously stated, and that
18 is that it's an untimely substantive change in testimony.

19 JUDGE MARGULIES: It will be admitted into evidence.

20 (The document was marked Applicant's
21 Exhibit EP-21-A for identification
22 and was received in evidence.)

23 CROSS EXAMINATION

24 BY MR. RILEY:

25 Q Is it your testimony, Mr. Broome, that your actions

1 will be determined by the information that you receive from
2 Duke Power's Catawba Station?

3 A (Witness Broome) Not entirely, no.

4 Q Well, would that be the information base for
5 your actions?

6 A That would be one source of information for the
7 decisionmaking process.

8 Q And if you will please provide for us the correct
9 name, what would be the name of the officer say at Duke which
10 would send this information to you regarding an emergency?

11 A I'm not sure I understand the question, Mr. Riley.
12 Would you repeat?

13 Q Well, at the Catawba plant, for example, there's
14 a control room. I doubt if you'll be getting this information
15 from the control room. What is the name of the facility,
16 area, at Duke in which emergency information will arise where
17 there are communication devices where they will communicate
18 to you?

19 A Well, there are three locations.

20 Q In the Catawba plant?

21 A No.

22 Q I'm just talking about in the Catawba plant.

23 A Well, one of them is on the site, the Technical
24 Support Center, and also, we have access directly from the
25 control room.

1 Q All right, so there are two spots, the control room
2 and the Technical Support Center.

3 A There are three spots.

4 Q All in the Catawba plant?

5 A No.

6 Q I'm just talking about those in the plant.

7 A To my knowledge there's two onsite; that's the
8 control room and the TSC, Technical Support Center.

9 Q Now, Mr. Phillips, where would you get information,
10 primary information, with respect to the development of an
11 emergency? The same sort of thing I've been asking Mr. Broome.

12 A (Witness Phillips) The same locations.

13 Q How about you, Mr. Thomas?

14 A (Witness Thomas) I would concur.

15 Q All right. Do you have anything to add to that,
16 Mr. McSwain?

17 A (Witness McSwain) The information would be -- once
18 the county got the information, a redundant phone call would
19 be made from the state of South Carolina, also.

20 Q Confirmatory?

21 A Confirming the information that we received.

22 Q And Mr. Lunsford?

23 A (Witness Lunsford) I have nothing to add to that.

24 Q And how about you, Mr. Harris?

25 A (Witness Harris) I will agree with that.

1 Q All right. Now I will ask each of you: Do you
2 regard the present emergency plans for your several states
3 and counties as full and complete with respect to essential
4 communications? Mr. Broome?

5 A (Witness Broome) Would you define an essential
6 communication?

7 Q I say that if there's an accident you're going to
8 need information in order to determine your decisions. That
9 would be essential information.

10 A You're asking if the basic information within our
11 planning documents is complete in order for us to arrive at
12 a conclusion, based on your definition of essential information?

13 Q That's correct.

14 A Yes.

15 Q And the same question for you, Mr. Harris?

16 MR. CARR: Excuse me. Could I have a point of
17 clarification? I thought I understood the question Mr. Riley
18 **asked** until I heard the clarification. Are you asking with
19 respect to the plan or are you asking with respect to equipment
20 in place?

21 MR. RILEY: I'm sorry, I missed your last five words.

22 MR. CARR: I said are you asking the question with
23 respect to the plan, or are you asking the question with
24 respect to equipment in place?

25 MR. RILEY: I'm asking with respect to the plan.

1 BY MR. RILEY:

2 Q Mr. Harris, did you answer?

3 A (Witness Harris) Yes.

4 Q And how about you, Mr. Phillips?

5 A (Witness Phillips) Yes.

6 Q Mr. Thomas?

7 A (Witness Thomas) Yes.

8 Q Mr. Lunsford?

9 A (Witness Lunsford) I have no doubt.

10 Q And Mr. McSwain?

11 A (Witness McSwain) Yes.

12 Q All right. Now, are you aware that in the spectrum

13 of severe accidents that's considered by the NRC that there is

14 an event called containment breach? Are each of you aware of

15 that?

16 A (Witness Broome) The term is familiar, yes.

17 Q Mr. Phillips?

18 A (Witness Phillips) Yes.

19 Q Mr. Harris?

20 A (Witness Harris) Please clarify what you said.

21 Q Are you aware that in discussing the spectrum of

22 severe accidents for which emergency planning is required,

23 that the NRC contemplates, among others, containment breach?

24 A (Witness Harris) Yes.

25 Q And Mr. Thomas?

- 1 A (Witness Thomas) I've heard the term.
- 2 Q And Mr. Lunsford?
- 3 A (Witness Lunsford) Yes. That's one end of the
4 spectrum.
- 5 Q That's correct. Mr. McSwain?
- 6 A (Witness McSwain) Yes.
- 7 Q Mr. Thomas, do you know what containment breach is?
- 8 A (Witness Thomas) I could speculate as to what it is.
- 9 Q You would rather say you don't know in the context?
- 10 A When you're dealing with a nuclear facility that
11 has a containment building, containment breach would mean
12 that somehow or other the security of the building as it
13 pertains to the nuclear reactor has been violated in some way.
- 14 Q Mr. Phillips?
- 15 A (Witness Phillips) I would concur with Mr. Thomas.
- 16 Q And how about you, Mr. Broome?
- 17 A I would agree that the integrity of the containment
18 building has been violated.
- 19 Q That's right. And would that be your understanding,
20 Mr. McSwain?
- 21 A (Witness McSwain) Yes.
- 22 Q Mr. Lunsford?
- 23 A (Witness Lunsford) Yes.
- 24 Q And Mr. Harris?
- 25 A (Witness Harris) Yes.

1 Q How many of you are aware that a generic item of
2 consideration right now has to do with the hydrogen release
3 problem?

4 MR. CARR: Your Honor, I'm going to object at this
5 point. I see no relevance to this line of questioning --
6 actually, I saw no relevance to the last one but let it go,
7 to try to get some indication of the direction we're headed --
8 to this contention. If you read Contention 8 what it says is
9 that the lines of authority in the plans are unclear, and
10 that's all it says.

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1 JUDGE MARGULIES: Mr. Riley, are you starting
2 someplace backward where you are going to get into a time
3 factor, is that what you are looking to?

4 MR. RILEY: I am going to get into a communication
5 factor appearing out of the duties and responsibilities put
6 forth in the plan.

7 MR. GUILD: Mr. Chairman, the contention itself
8 speaks very clearly to the early hours and the accident that
9 is fast-breaking and I think that is the foundation these
10 lines of questions lead to, Your Honor.

11 JUDGE MARGULIES: I could see Mr. Riley setting up
12 a scenario but he is setting it up pretty far back and he
13 is going to bring us up to an emergency situation, is that
14 what you are doing?

15 MR. RILEY: That is correct, Your Honor.

16 JUDGE MARGULIES: You can use the time as you wish.
17 You may proceed.

18 BY MR. RILEY: (Resuming)

19 Q Are you aware then that there is under consideration
20 a hydrogen explosion scenario by the NRC, Mr. Broome?

21 A (Witness Broome) I am familiar with it within the
22 context of testimony that has been provided on the subject
23 matter.

24 Q Mr. Harris.

25 A (Witness Harris) Yes. To the same extent I am

1 familiar with it.

2 Q How about you, Mr. Phillips.

3 A (Witness Phillips) The same.

4 Q You are familiar with it.

5 A Yes.

6 Q Mr. Thomas, are you in acquaintance with the hydrogen
7 explosion scenario?

8 A (Witness Thomas) Just as reference.

9 Q Mr. Lunsford.

10 A (Witness Lunsford) No, I am not familiar with it.

11 Q All right. Mr. McSwain.

12 A (Witness McSwain) As to how it has been referenced
13 earlier, yes.

14 Q Have you made a determination and made a study which
15 assures you that in the event of this type of accident the
16 explosion which breaches the containment will leave working
17 and in tact at least one of the communication points that Mr.
18 Broome has testified to? The question was, have you made a
19 study and assured yourself to the point that information can
20 indeed originate and be communicated to you from the Catawba
21 station, Mr. Broome?

22 MR. CARR: Your Honor, I will object at this point.
23 To begin with, we are talking about a hydrogen explosion scenario
24 which is a matter which these intervenors have sought to raise
25 in this proceeding time and time again and it has been ruled out

1 by the Safety Board on at least three occasions. We have yet
2 another motion now pending before the Safety Board that
3 raises the same scenario.

4 Second, this is afield from the contention. If Mr.
5 Riley wants to assume a time and start from there, perhaps we
6 can go down that road, but to lay this foundation on matters
7 which are totally irrelevant to this proceeding and this
8 contention in particular is unwarranted. I object on that
9 basis.

10 MR. RILEY: Mr. Chairman, for the plan to work
11 the indications have to be generated at the site of the
12 emergency. I think it is a perfectly valid question to ask
13 whether the planners have any assurance that that can indeed
14 happen in the hypothetical emergency that I have just
15 described which is one of those that is considered by the NRC
16 in indicating the spectrum of accidents which should be
17 discussed in emergency planning.

18 MR. CARR: I would like to make one further point
19 if I could, Your Honor. I have here in this notebook in front
20 of me the discovery responses and request for responses that
21 have made in this proceeding. If I hear Mr. Riley correctly
22 what he is asking these gentleman to assume is that we have a
23 hydrogen explosion which takes out the control room. Nowhere
24 in this proceeding has that been raised or sought to be
25 raised and it was not, I say again was not raised in the

1 responses to the discovery that we asked. It has never been
2 raised to my knowledge in this contention until right now.
3 In fact, I will go further and state that it was never raised
4 in response to interrogatories in this contention, the point
5 about not having the necessary communication from the plant
6 to the cognizant official. This is the first time we have
7 heard this.

8 MR. GUILD: It is their pre-filed testimony that
9 raises the communication issue.

10 MR. CARR: In the context of over-loading not in
11 the context of an explosion blowing up the control room.

12 (Board conferring.)

13 JUDGE MARGULIES: Could you repeat the question, Mr.
14 Riley?

15 MR. RILEY: Might I request the court reporter to do
16 so because I don't have a clear recollection of just exactly
17 what I said.

18 JUDGE MARGULIES: Would the reporter restate it?
19 (Whereupon, the reporter read the record as requested.)

20 (Board conferring.)

21 JUDGE MARGULIES: Does that tie in at all, Mr. Riley,
22 to Mr. Coleman's testimony on page one?

23 MR. RILEY: Mr. Coleman describes a variety of
24 communication systems. This question ties in with what the
25 constants will be.

1 MR. CARR: Your Honor, just so that the record is
2 clear today is the first time that that issue has been raised
3 as a part of this contention or any other contention. We do
4 have a question with overloading of the telephone systems
5 and will communications be available in that event. But we
6 did not have before us until today the question of whether
7 there would be an explosion at the plant that would destroy
8 part of the communication system.

9 MR. GUILD: Mr. Chairman, if counsel don't anticipate
10 how to try their case by way of effective pre-filed testimony--

11 MR. CARR: Mr. Guild, that is the purpose of
12 discovery.

13 MR. GUILD: Excuse me, sir.

14 JUDGE MARGULIES: Just let Mr. Guild finish.

15 MR. GUILD: It is really not our problem that
16 Applicants don't sufficiently address matters in their pre-filed
17 testimony. The communications aspects of the testimony not
18 just from Mr. Coleman but of each of the witnesses go to the
19 point of their being effective information transmittal upon
20 which to formulate protection action decisions.

21 I don't think it is a matter that should require
22 as much time as it has taken so far nor any great deal of
23 additional time to simply establish that there are accident
24 scenarios which are within the contemplation of a planning basis
25 for emergency planning for which such a reliance on existing

1 communication links talked about their own pre-filed testimony
2 may indeed be misplaced.

3 MR. CARR: Your Honor, our position is that Mr.
4 Guild's statement is sophistry in the extreme. The purpose of
5 testimony is to narrow and focus -- or of discovery is to
6 to narrow and focus contentions. I repeat, this matter is
7 being raised for the first time today.

8 MR. JOHNSON: The primary focus of this contention
9 is the assignment of responsibilities and the coordination
10 among the off-site agencies. To the extent that they are
11 relying upon communications that might emanate or have to go
12 through the Catawba Nuclear Station, conceivably their
13 ability to coordinate and communicate and therefore take
14 effective coordinated protective action might be affected.

15 It seems to me to go beyond that and start talking
16 about what the cause of the factors are gets very marginal
17 in terms of materiality and the question, it seems to me, is
18 are they relying on Catawba's communications solely through
19 the station, what are the alternatives and that sort of
20 line of questioning.

21 MR. RILEY: Judge Marquies, we are not trying to get
22 into the causation here. We are just trying to point out that
23 as I read their testimony, all of it, shows that they are
24 dependent essentially on the coordination of what happens
25 from a message, a single message, that emanates from the Catawba

1 station. I am saying absent that method, what are they going
2 to do? What will happen to their coordination? What will
3 their emergency response be? If their initiating link in a
4 chain is absolutely essential from their testimony to their
5 being coordinated, if their link disappears what is the back-up
6 position?

7 JUDGE MARGULIES: The question as you last stated
8 it is admissible and if that is your question, you may ask it.

9 BY MR. RILEY: (Resuming)

10 Q All right. Now that we understand each other, Mr.
11 Harris, since you are representing the State of North Carolina
12 here what is your back-up position in the absence of a message
13 from the Catawba Station during an emergency?

14 A (Witness Harris) Are you speaking about the initial
15 notification?

16 Q Initial notification and on. I mean we can posit
17 several scenarios. The most grave one would be where there is
18 no communication from the station and secondary evidence
19 indicates that there has been an accident or that a sound
20 of an explosion or something like that has been reported back
21 to you but there is no communication from the Station.

22 A An explosion of magnitude that it would take to
23 destroy the communications in the control room, if that
24 occurred I can't imagine it would be but a few moments before
25 we would find it anyway. This past month for instance we have

1 had 97 notifications ranging from anything from ten gallons
2 of diesel fuel spilled along the highway someplace to 600,000
3 gallons of propane burning in the heart of Greensboro. I can't
4 imagine anything of that magnitude happening but we would know
5 about it in a matter of moments whether the plant calls or not.

6 Q So now you know about it. The question is, how do
7 you operate from that point on? Is it not true that essential
8 information with regard to magnitude of release would come to
9 you from the Catawba Station according to the present plan?

10 A An explosion of that magnitude of material --

11 Q Excuse me. Could you please first answer yes or no
12 on that question.

13 A Would you repeat the question?

14 Q Would you please answer yes or no as to where you
15 would get your information about the magnitude of the
16 radioactive release?

17 A I can't answer that question.

18 MR. CARR: Your Honor, I am going to object. This
19 is a new contention period. It is not the contention we are
20 here to try.

21 MR. RILEY: Well, if we don't have the basic
22 information for these emergency response people emanating from
23 the designated source, how do they respond? I say that
24 confusion will result. This is one of our concerns.

25 MR. CARR: Expressed here for the first time today.

1 MR. GUILD: Just noticed by the first time by Mr.
2 Carr today.

3 MR. CARR: Expressed for the first time today, Mr.
4 Guild.

5 MR. GUILD: The same objection has been raised and
6 has been overruled. Our time is evaporating. Mr. Carr raised
7 the point in a previous objection. He wants to raise it
8 again. He can raise it ad nauseam but it does impinge on our
9 ability to get done with this panel.

10 JUDGE MARGULIES: I will permit the question. Let's
11 get on with it.

12 BY MR. RILEY: (Resuming)

13 Q The question then is, will you have the necessary
14 information with respect to the radioactive release if you
15 don't get information from the Catawba site? You can start
16 with a yes or no on that and then elaborate if you like.

17 A (Witness Harris) Yes.

18 Q How will you get it?

19 A From the radiation protection section.

20 Q Let's take a look at the time schedule. If there is
21 a prompt release, where will your radiation section be and
22 how many hours will it be before they get to the radioactive
23 plume?

24 A It will take seven to nine hours for the state
25 emergency response team just to get to this area but this

1 doesn't mean that they can't make recommendations and take
2 protective actions prior to that time. Given the weather
3 conditions and the magnitude you are talking about, I am
4 sure they would recommend a protective action.

5 Q Would the protective action be related to the
6 magnitude of the release?

7 A I am sure it would be, yes, sir, if it is the
8 magnitude you are talking about it would be obvious.

9 Q You are simply asserting that the magnitude would
10 be high and you would go to the far end of the scale in
11 responding.

12 A If I was operating without any information at all
13 from the plant, that is what I would do and I am sure that
14 is what the radiation protection section would recommend.

15 Q Mr. Lunsford, you have been hearing this conversa-
16 tion and testimony. What is your response to it in terms
17 of what the State of South Carolina would do if there was no
18 signal coming from Catawba that there had been an accident
19 there?

20 A (Witness Lunsford) The first thing we would do
21 would be to assure ourselves that our communications with
22 the Crisis Management Center was intact.

23 Q That is in Charlotte, right?

24 A Yes.

25 Q And then?

1 A We would try to find out through that means what the
2 situation was. In the meantime upon the agreement of Duke
3 Power we would try to restore communications immediately with
4 the plant. The way we would do that in my judgement is by
5 trying to get radio communications reestablished with the
6 plant and we could do that by several means by either having
7 law enforcement radios not necessarily having law enforcement
8 people drive into the plant because I am sure we could get
9 some Duke Power volunteers to do that. At least, we might
10 put it to Duke Power that way or if a local government radio
11 which would be on our net with the FEOC. You are speaking
12 primarily of the communications being knocked out at the
13 plant due to an explosion of hydrogen which is contained
14 inside the container building. Restoration of communications
15 would be accomplished by immediate conversation with
16 responsible people in the Crisis Management Center to find
17 out what the situation is.

18 Q Are people in the plant equipped with radiation
19 monitoring devices?

20 A I would defer that answer to people who work for
21 Duke Power Company.

22 Q Do you think it is a reasonable thing to assume
23 that they are?

24 A In my view it certainly would be reasonable.

25 Q In the hypothesis which I think is reasonable here

1 the radiation levels were extremely high, would we not expect
2 those people to leave the site as rapidly as they could?

3 A I don't believe that I am qualified to respond to
4 that. I think you should ask the people from Duke Power
5 Company who are more familiar with the attitudes of their
6 employees to respond to that.

7 Q Do you see the scenario that we are contemplating,
8 this hypothesis, as impinging upon the effectiveness of your
9 emergency operation?

10 A If you hypothesize that we are completely out of
11 communications?

12 Q I do.

13 A Of course, that is why we exist, to respond to the
14 emergency and you have postulated an extreme emergency and I
15 can talk about the attitude of the people in South Carolina
16 because I am familiar with that and I feel in my judgment
17 they would respond in a very positive fashion.

18 Q You have already testified that you have been close
19 to the generation of the emergency response plan for the
20 Catawba Station, is that correct?

21 A Yes.

22 Q Was the eventuality that we have been discussing
23 considered in drawing up that response plan?

24 A To my knowledge, it has not been considered. Mr.
25 McSwain might be able to respond to that.

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Q Mr. McSwain.

A (Witness McSwain) Not to my knowledge.

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1 Q Mr. Harris?

2 A (Witness Harris) Not to my knowledge.

3 Q That would, of course, be the North Carolina
4 Plan.

5 Mr. Lunsford, would you consider it desirable
6 to have supplies of decontamination equipment available to
7 deal with a possible emergency at Catawba?

8 A (Witness Phillips) Did you address that to me,
9 Mr. Riley?

10 Q I'm sorry, I thought I said Mr. Lunsford.

11 A (Witness Lunsford) Your question was whether it
12 would be advisable to have decontamination equipment in the
13 event of an accident?

14 Q My actual word was "desirable."

15 A Desirable. Where did you have in mind, sir?

16 Q I would say in the vicinity, at least, of shelter;
17 in the vicinity of monitoring points where it would first be
18 detected whether a car was contaminated or a person was
19 contaminated.

20 JUDGE MARGULIES: How does this relate to the
21 contention, Mr. Riley?

22 MR. RILEY: It has to do, Judge Margulies, with
23 what I think I can develop as a confusion between actual
24 plans and planners' mindsets, and the federal aspects of
25 this, namely NUREG 0396.

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1 JUDGE MARGULIES: Well, I think we are starting
2 out today where we started out in the beginning of the
3 proceeding, where you start so far back that the time
4 it takes to arrive at the particular question, you know,
5 just wastes a considerable amount of hearing time.

6 If you could state a hypothetical that would
7 bring you up to the point of confusion, I think it would
8 help us all -- alleged confusion.

9 BY MR. RILEY:

10 Q Does the South Carolina Plan make any provision
11 for decontamination equipment, Mr. Lunsford?

12 A (Witness Lunsford) Let me state that I have not
13 previously testified regarding this plan. We had other
14 people from South Carolina who testified to that.

15 There are, as I recall, lists of available
16 radiological monitoring equipment in the plan. And insofar
17 as decontamination, I believe that yes, there is reference
18 to that.

19 Q Mr. McSwain, could you elaborate any?

20 A (Witness McSwain) Could you repeat your question.

21 Q Yes. Is there any provision in the South Carolina
22 Plan for decontamination equipment?

23 A Yes, there is.

24 Q All right. Mr. Thomas, in your plan?

25 A (Witness Thomas) Yes, there is.

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1 Q Mr. Phillips, in the Gaston Plan?

2 A (Witness Phillips) Yes.

3 Q In the North Carolina Plan?

4 A (Witness Harris) Yes.

5 Q Mr. Broome?

6 A (Witness Broome) Yes, there is.

7 Q What about the provision of potassium iodide,
8 which is a medication? And I am talking now for members of
9 the public exposed, not Duke employees and not emergency
10 workers, is there a provision --

11 MR. CARR: Objection, your Honor. That reraises
12 a contention in the proceeding that was argued at the
13 prehearing conference on emergency plans and was dismissed
14 by the Safety Licensing Board September of October of last
15 year -- September 29th of last year.

16 MR. RILEY: We are not just going on the merits;
17 we just want to find out if it is part of the planning.

18 JUDGE MARGULIES: How does it relate to the
19 contention which raises the matter of alleged lack of
20 ability to coordinate and to function as a unit?

21 MR. RILEY: It has to do with the relationship
22 between the North Carolina and South Carolina, the specific
23 county plans and the guideline under NUREG 0396. In other
24 words, federal-state-county relationship.

25 JUDGE MARGULIES: In what manner?

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1 MR. RILEY: Well, citing NUREG 0396 it says:
2 "The following examples are given to further clarify the
3 Task Force guidance on EPZ." And it states:

4 "No special local decontamination provisions
5 for the general public, ergo blankets, changes of clothing,
6 food and special showers."

7 It states: "No stockpiles of anti-contamination
8 equipment for the general public."

9 It states: "No special stockpiles of emergency
10 animal feed."

11 It states: "No special radiological medical
12 provisions for the general public."

13 Now, it seems that we have already elicited
14 testimony from this group of planners that they have some
15 such provisions. I am simply indicating that there is no
16 awareness on their part apparently, what the federal guideline
17 in this matter is. I would say that is a confusion.

18 JUDGE MARGULIES: What is the bottom line?

19 Assuming the federal standard doesn't require it,
20 and they do, what is the bottom line on that, Mr. Riley?

21 MR. RILEY: Well, I suppose the bottom line is
22 that if they do not avail themselves of the guideline in
23 this respect, it raises the question of how many other areas
24 in which the guideline is either not a matter of awareness, or
25 is not a matter being observed.

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1 JUDGE MARGULIES: Apparently the guideline doesn't
2 require those things.

3 If the state or local plans want to go beyond
4 the guideline, I don't see how that establishes lack of
5 coordination or confusion.

6 MR. RILEY: Well, I certainly don't hold with
7 the guideline, and I do think the state plans are superior
8 insofar as they do go beyond the guideline. I think it
9 is relevant that there is no apparent coordination in this
10 respect. They have not abided by these containing guidelines.

11 MR. CARR: Your Honor, I guess I am confused. If
12 the guideline Mr. Riley is referring to is 0396, again as I
13 pointed out, the Board has already ruled on that. It has
14 concluded provision of radioprotective drugs for the general
15 public, including the EPZ, is not required. That is on page
16 6, the order of September 29, 1983.

17 I just fail to see how what we are talking about
18 here relates to this contention.

19 MR. RILEY: I will be glad to move on.

20 JUDGE MARGULIES: Thank you.

21 BY MR. RILEY:

22 Q During the first seven hours, who will actually
23 write the EBS messages in the circumstance we are discussing?

24 A (Witness Broome) Who are you addressing the
25 question to?

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1 Q Mr. Broome?

2 A It could be the public information office
3 representative in the EOC; it could be myself; it could be
4 Mr. Fox who is the operations group chief in charge of the
5 EOC staff, or it could be a team effort.

6 Q Mr. Harris, what is your view on who writes the
7 EBS messages during the first seven to nine hours?

8 (Witness Harris) I would agree with Mr. Broome.
9 It would be done, most likely in his EOC. He would probably
10 talk to us before he did it. But it would be done there.

11 Q And Mr. Phillips?

12 A (Witness Phillips) It would be -- Mecklenburg
13 has initiated contact with EBS. He would consult with
14 Gaston County on the EBS message.

15 Q Before it was issued?

16 A Pardon?

17 Q Before it was broadcast?

18 A Yes, sir.

19 Q Mr. Thomas?

20 A (Witness Thomas) We agree with Mr. Phillips.
21 We also have examples of the EBS message in the plan, and
22 it is a guideline to coordinate it with Mr. Broome in our
23 EOC.

24 Q Is it your understanding, too, Mr. Lunsford, that
25 the EBS message would initiate with the EOC, one of four

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1 parties Mr. Broome refers to?

2 A (Witness Lunsford) You are speaking of time when,
3 before declaration of emergency in the State of South
4 Carolina?

5 Q Between zero and seven hours before the FEOC and
6 the SERT are in position.

7 A I don't think it is going to take us anywhere
8 near seven hours to be at the FEOC.

9 Q You will be there in three or four hours. In that
10 timeframe, before the FEOC becomes operational.

11 A Yes. In the meantime, I would presume rather
12 early on, if we have reached an alert stage in the sequence
13 of events, the declaration of emergency has been declared in
14 South Carolina and the State Emergency Operation Center is
15 open in Columbia.

16 Q Under that circumstance, would Mr. Broome's four
17 parties be initiators of the EBS that was broadcast in
18 South Carolina?

19 A It would be coordinated through our EOC in Columbia,
20 a public information person, representative of the State
21 Government in South Carolina, in communication with York
22 County.

23 Q Would it in your opinion make any difference as
24 to the meteorology at the time? For example, if the plume
25 were known to be moving into South Carolina, under these

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1 circumstances might somebody in South Carolina initiate the
2 EBS message?

3 A Yes, but it would have to be -- this is a mutual
4 thing between all of us which we have drilled on already. I
5 might say that it worked perfectly the first time we did it,
6 which I am very happy to see.

7 But we talk to each other --

8 Q But Mr. Broome indicated --

9 A -- to make sure that we were putting out the
10 same words.

11 Q But Mr. Broome indicated that certain people in
12 Mecklenburg County would draft the EBS message. And
13 Mr. Thomas and Mr. Phillips indicated yes, there would be
14 coordination on conceivably amendment signing off.

15 My question is, would the EBS message initiate
16 in Mecklenburg, even if the plume were moving into South
17 Carolina?

18 A (Witness McSwain) As we stated earlier, it has
19 to be -- I underline the words "has to be" -- a coordinated
20 effort, because we have two states and three counties
21 affected. Based upon your scenario, assuming that the plume
22 is moving into South Carolina, already in South Carolina, it
23 has still got to be a coordinated effort between both states
24 and all three counties. That is the purpose of the EBS
25 system, to insure that the same information is going out to

mm9 1 all the people in both states and all three counties.

2 Q And what I am trying to find out is, how it
3 comes about.

4 I am trying to find out how many EBS messages
5 would be drafted in more or less the same time, and how much
6 weight it would carry as to whether the state being
7 primarily affected was drafting the EBS message or not.

8 A What type of EBS message are we referring to, sir?

9 Q Well, if the plume is moving into South Carolina,
10 there has been a release, we already have a general emergency
11 now, you want to give some specific instructions as to what
12 people do, I assume, in terms of what areas to evacuate. Is
13 that correct?

14 A That's true.

15 Q Now, under those circumstances, would it be
16 most appropriate for the message to initiate in Mecklenburg
17 County, or to initiate in York County?

18 A I assume the protective action in South Carolina
19 would initiate in South Carolina, coordinated through the
20 EBS station in Charlotte.

21 Q You would expect the EBS stations in Mecklenburg
22 and adjoining counties in North Carolina to carry the
23 same message as was carried in South Carolina?

24 A Specifically directed for the residents in South
25 Carolina, because the protection actions are different in

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1 the areas that are affected in South Carolina than the ones
2 if they were upwind in the Counties of Mecklenburg and
3 Gaston. The directions would be different.

4 Q Now does either state plan -- whoever is knowledge-
5 able to this I would like your reply -- address the matter
6 as to message initiation with respect to plume presence?

7 A (Witness Broome) I am not sure I understand
8 your question, Mr. Riley. If information that we receive
9 indicates that a plume is present, then the proper course
10 of action that we are going to take is based on that
11 information. Does that answer your question?

12 Q No, because it doesn't discuss the EBS message.

13 In other words, in other words, if you heard
14 that the wind was from the north, and the plume was being
15 borne into South Carolina, would you write the EBS message?

16 A No, I wouldn't write the message. It would go
17 back to what Mr. Lunsford and Mr. McSwain have indicated.
18 There is a primary station for South Carolina and there is
19 one for North Carolina. The coordination of messages would
20 be in conjunction with those two stations. And the proper
21 course of protective action would be indicated in the EBS
22 message for the affected area.

23 Q Now, my question was for all of you gentlemen
24 except Mr. Coleman, does the plan address where the message
25 initiates in relationship to where the plume is found to be?

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1 A (Witness Lunsford) I don't recall. It may not.
2 But you are looking at this in one aspect. And
3 I can assure you that we are looking at it within the ten-
4 mile EPZ, and we don't think about North Carolina or South
5 Carolina. We think about the people inside that ten-mile
6 radius being informed. And we are going to put out one message
7 that will pertain to all of those people and give them
8 information about what they should do in the various sectors
9 that they are in.

10 And if our EOC is open and our public relations
11 people are present in coordination with the State of North
12 Carolina, and the plume is in our ballpark, I can assure you
13 that we are going to say, "This is what we think should be
14 said," based on the recommendations that have been given to
15 us by our own Department of Health and Environmental Control.

16 A (Witness Broome) I would concur with that.

17 A (Witness Harris) To go one step further, the
18 general aspects of the EES system have been tied together,
19 are being tied together --

20 Q I missed some of your words, Mr. Harris.

21 A To support this type of approach, the technical
22 aspects of the EBS system have been changed. At one point
23 in time this area was a separate EBS system for North
24 Carolina and separate EBS system for South Carolina.

25 In this area the two EBS systems have been tied

mml2

1 together to assure that the same word goes out to all the
2 people within the ten-mile EPZ.

3 Q Now there is a media center in the plan, the
4 function of which -- and I am asking -- is to generate
5 appropriate messages to the public in their interest during
6 the emergency, is that correct, Mr. Lunsford?

7 A (Witness Lunsford) Yes. There is a public
8 information standard operating procedure for the State of
9 South Carolina, which I believe includes that aspect.

10 Q And Mr. Harris, in North Carolina?

11 A (Witness Harris) Yes.

12 Q Now, I assume that you gentlemen were tuned in
13 on radio-TV during the TMI accident, is that correct?

14 A (Witness Lunsford) Yes, definitely.

15 A (Witness Harris) No.

16 A (Witness Broome) I was not.

17 Q Mr. McSwain?

18 A (Witness McSwain) No, I was not.

19 Q Mr. Thomas?

20 A (Witness Thomas) I was not.

21 Q Mr. Phillips?

22 A (Witness Phillips) No, sir.

23 Q When I said "tuned in," I didn't mean through
24 official equipment, I just meant watching television,
25 listening to radio broadcasts at the time.

mm13

1 Well then you, Mr. Lunsford, would have heard
2 various news broadcasts. Do you recall any, what shall we
3 say, conflict between the messages that one might derive
4 from various news broadcasts and other sources?

5 A (Witness Lunsford) Yes. I have an impression
6 that there was some confusion.

7 I can't give specific examples, but I remember
8 speaking about it.

end T6

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1 Q And was there not a question of whether or not that
2 was likely to have a large release shortly? This was an
3 opinion, no, there will not be a large release shortly; yes,
4 there may be? Is that a part of your recollection?

5 MR. MC GARRY: I'll object to the question. We're
6 talking about TMI and the response at TMI in 1979, and I
7 don't see the relationship between that response and the
8 current case --

9 MR. RILEY: I'll get right on to the question, if
10 I may.

11 JUDGE MARGULIES: I'll permit the question.

12 BY MR. RILEY:

13 Q What provisions have been made for dealing with
14 news reports which, say, obfuscate or conflict with and/or
15 counteract the EBS messages which have been designed by the
16 state plans? Mr. Lunsford?

17 A (Witness Lunsford) I think both the state and
18 utility have done what is required to provide completely open
19 shock regarding what is happening at the plant. At least we're
20 insisting on that. And I think we will know what's happening
21 at the plant.

22 There is a provision in the plan, and I think we
23 have a witness coming on later who can testify more to this
24 than I, about rumor control. But I think it would be a
25 diabolical press indeed who would try to incite the public

1 into panic in an incident like this.

2 Q Well, at a time like this there are several
3 interesting impressions that arise. At TMI there was
4 considerable suspicion that the utility was not telling the
5 truth. Do you recall that?

6 A I would not address that, sir. I am not a part
7 of that establishment, nor did I have any insight into that
8 at all.

9 Q Well, I'm using it as a base for a hypothetical
10 question. That is, you certainly have heard accusations of
11 the sensationalism of the press -- have you heard such
12 observations?

13 A I am personally aware of the aggressive manner of
14 the press in that particular instance, yes.

15 Q And you have probably heard somewhat cynical
16 statements like the business of newspapers is selling them.
17 And, of course, a sensational story helps. What I'm pointing
18 out is that in the event of an emergency here, you cannot
19 rely on reporters being objective or necessarily believing
20 that the EBS messages are telling the truth.

21 So my question is, are there any means in the
22 South Carolina plan for coping with what you feel are
23 inaccurate or misleading press stories?

24 A Yes. I believe we're doing that now by building
25 a foundation of openness and of education of the public. I

1 think our own reputation -- that is, the Emergency Preparedness
2 Division, and I can speak for that -- we are known as a
3 group of square shooters, and we don't have any reason not to
4 be. We are not working for Duke Power or South Carolina Power
5 and Light, or Carolina Power and Light, excuse me, and I
6 think in that matter, yes, we're doing what we can.

7 Q So you have a commitment to objectivity in the
8 course of an accident. What you're telling is basically you
9 have a good reputation that you're relying on to keep people
10 from giving credence to some sensational and quite conceivably
11 misleading reports.

12 A Well, you're making a presumption that I wouldn't
13 make about the newspaper people sensationalizing the incident.

14 Q Excuse me. I have in mind the media people, not
15 just the papers.

16 A All right. Well no, I would hope that if a person
17 tried to mislead the public or lied, they would be fired by
18 the organization for which they work in an instance like this
19 or any other.

20 Q Mr. Harris, you've heard the proceeding and the
21 discussion. Have you any position or comment with respect to
22 the North Carolina plan for dealing with media reports which
23 you feel do not --

24 A (Witness Harris) We feel that the best way to deal
25 with it is to provide them with all the information we have

1 whenever they want it.

2 Q All right. Now, both plans -- and I certainly
3 recall quite specifically the North Carolina plan -- discussed
4 rumor control. In this context, what have you in mind -- how
5 would you define rumor in this context?

6 A (Witness Harris) Was that for me, sir?

7 Q Yes, sir.

8 A I would define rumor as some news item or some bit
9 of information, either from a member of the general public or
10 through some news media that was incorrect. And we would try
11 to counter that by putting out the correct information.

12 Q And if the rumor surfaced in immediate communication,
13 whether it be electronic or print, you would deal with it after
14 the event, after it had been circulated?

15 MR. CARR: Your Honor, I'm going to object at this
16 point. I have sat here and let this go on. This has nothing
17 to do with this contention at all. It is totally irrelevant
18 to the subject matter of this contention and the direct
19 testimony of these witnesses. It's interesting, but it has
20 nothing to do with what's before us.

21 MR. GUILD: Again, Mr. Chairman, I think Mr. Carr
22 has a rather strained view of what is relevant to the proof
23 of our contention. His narrow views as to the proof of the
24 contention are understandable, but they certainly don't
25 control. And it's our view that in order to have a plan that

1 works you have to have more than these fine gentlemen involved
2 in doing it. You have to have, in the worst case scenario,
3 several hundred thousand people hear what you're supposed to
4 do, believe what you're supposed to do and take appropriate
5 action. As long as we confine ourselves to what perhaps
6 Applicant's counsel would have us look at, and that's only
7 the pieces of paper or the fine gentlemen who wrote them,
8 all is well. But so long as we're free to question the
9 adequacy of the ability to implement those plans, it seems to
10 me to be relevant to ask the question how they assure that
11 accurate and complete information, trustworthy information,
12 will get out and that inaccurate information is effectively
13 countered in a timely fashion to affect public response,
14 appropriate public response.

15 MR. CARR: We've had substantial testimony over
16 the past three weeks about EBS messages, about rumor control
17 centers. My point is read the contention and it goes to
18 lines of authority from the states and between and among states
19 and counties. That's what the testimony addresses.

20 MR. GUILD: Mr. Chairman, maybe we just have a basic
21 disagreement about the scope of the contention. Our view is
22 that Contention 8 essentially wraps the whole ball of wax
23 together. You can have the narrow finite aspects of emergency
24 planning that perhaps are the focus of individual contentions.
25 Say, for example, the public information and education

1 contention.

2 But Contention 8 essentially says that when all the
3 actors are there trying to implement the plan, that it won't
4 work. That it won't work because there are ineffective
5 assignments of primary and support responsibilities, confusion
6 and lack of coordination.

7 Now, you can't address that ultimate flaw without
8 being able to focus coordination of what assignment of
9 responsibility for what accomplishing instructions and orders
10 and directives to do what.

11 With all respect to counsel for Applicants, you
12 cannot effectively demonstrate what Contention 8 alleges
13 without being able to say how do you effectively accomplish
14 the subparts of taking effective protective action. In
15 this instance, rumor control public information is an integral
16 part of getting the public to do what you want them to do --
17 coordination.

18 MR. CARR: You know, Mr. Chairman, I guess we are --
19 as Mr. Guild says, we are in fundamental disagreement because
20 it's Applicant's view that the way the Commission process
21 works is you begin with a contention, you narrow it through
22 discovery so that you know what you're confronted with when
23 you go to trial.

24 Now I won't cite the cases, but that is what the
25 case law in the Commission says, clearly. We looked at the
discovery responses and we asked specifically with regard

1 to each plan what areas do you contend are lacking an
2 assignment of clear and effective primary responsibility for
3 emergency response. There's stuff in here, but it doesn't
4 go to rumor control; it doesn't go to the subject that we're
5 talking about now.

6 Let me have one second, Your Honor, please.

7 (Pause.)

8 Let me read to you what Judge Kelley said at the
9 prehearing conference about this specific contention, because
10 we had objected to it on the grounds that it lacked specificity
11 and basis, among other things. And when he admitted the
12 contention, that Board said this about it:

13 "Number 8 is a contention that's concerned with
14 various aspects of coordination. We're going to allow this
15 contention. Again, we thought on some specifics it was a
16 rather close call, but we decided it was sufficiently specific."

17 "Another interpretive comment that we would make
18 that I think is merely consistent with what we said earlier
19 today, the first couple sentences of this contention are quite
20 general. We read them as really introductory sentences and
21 not as substantive complaints. But with that understanding
22 and starting with the third sentence, the sentence that
23 begins, 'Conditions may be worse...' and so on, there are
24 three or four different points that are made that we understand
25 to be the focus of concern."

1 Those points are what happens when North Carolina
2 is traveling from Raleigh, what happens when South Carolina
3 is traveling from Columbia, and how do the states coordinate
4 their activities so as not to cloud the lines of primary
5 responsibilities; and finally, what are the responsibilities
6 of respective county governments with respect to activities
7 in an emergency. That's what the contention is about.

8 MR. GUILD: That sounds just fine, and I think
9 Judge Kelley aptly put the position that I just tried to
10 argue. And I'm looking at the discovery responses that
11 Mr. Carr seems to place such great reliance on as being the
12 basis for his chagrin that we are now addressing what you're
13 supposed to actually do in an emergency instead of a piece of
14 paper that tells how it's all going to happen.

15 I see very explicit with regard to an answer to
16 an interrogatory on Content -- by the way, these answers,
17 again, were prepared by Riley. I was engaged exclusively
18 in preparing proposed findings on the quality assurance
19 issues at that time. Mr. Riley is not a lawyer, as we've
20 discussed before, but his answer aptly states at page 9 of this
21 filing, "These examples are not meant to be exhaustive." And
22 that's with respect to the question that Mr. Carr seems to
23 place such reliance on -- you know, what specific areas do you
24 contend are lacking an assignment of clear and effective
25 primary responsibility.

1 He gives examples and he says very clearly, these
2 examples are not meant to be exhaustive, and that's a
3 quotation. He can't claim any surprise or prejudice.

4 And the fundamental point is it's not simply
5 enough to have an organizational chart on a piece of paper;
6 they've got to demonstrate that they can do something with
7 that organizational structure. In this instance, as Judge
8 Kelley points out, our primary concerns are yes, what do you
9 do in the first few hours in a severe accident case where the
10 state people have not arrived on the scene, and yes, what are
11 the county's responsibilities. We're addressing that.

12 MR. RILEY: If you read from the admitted part of
13 the contention which Judge Kelley approved, the first sentence
14 is, "Conflict, confusion and lack of coordination are likely
15 to prevail. One source of that is muddying the waters by
16 the media." Want to find out how the plans address it.

17 MR. JOHNSON: Mr. Chairman, I read Judge Kelley's
18 remarks before coming down here. You can look at them and
19 see that he specifically states that he treated those
20 comments as purely of an introductory nature, and not to
21 reflect the substance of the contention which he has stated,
22 I believe, in the passages from the prehearing conference of
23 August 8, 1983 -- that he's primarily focusing the contention
24 starting with the sentence that says "conditions may be
25 the worst during the seven to nine hours after the accident,

1 but the period before that was of a different nature and did
2 not necessarily -- I don't believe anyone contemplated at
3 that time after that ruling, that any source of conflict,
4 confusion or lack of coordination resulting from anything,
5 any standard that's raised in the regulations under
6 50.47B (1) through (16) or any of the standards or the criteria
7 that are contained in NUREG-0654, Revision 1, were to be
8 litigated through this particular contention.

9 For better or worse, the regulations under those
10 standards are divided into sectors; all emergency planning
11 offsite and even onsite in some way is interrelated. That
12 doesn't mean we litigate all of whether effective emergency
13 preparedness can and will be implemented during an emergency
14 with every contention. This one is limited to the assignment
15 of responsibility and coordination of functions among the
16 counties, particularly focusing during the initial period.
17 And not only effectiveness of any particular protective action
18 or on the public information system.

19 MR. GUILD: Mr. Chairman, you can chip away at our
20 case and NRC Staff and Applicants do the best they can to do
21 that. They say, oh, you're asking the wrong question; wait
22 until next week because then Contention X3 will be up and you
23 can ask the question. Or, you forgot to ask the right
24 question last week, your time has passed.

25 You know, we can argue this technical nitpicking

1 all we want to, but the fundamental point is this contention
2 is the summation of how you actually accomplish it all.

3 Now, I have planned my examination to largely
4 focus on just that point that Judge Kelley described, and
5 that is, how you coordinate, how you effectively prevent
6 confusion and therefore, ineffectual implementation, during
7 the early hours of a severe accident, before you have all of
8 your troops on the site and all of your equipment and every-
9 thing works under the ideal that they presume will be extant.

10 It's just too facile to say oh, you can't talk about
11 the specifics because heaven forbid, if you talk about the
12 specifics you might actually demonstrate what Intervenors
13 have been trying to contend all along, and that is that the
14 daggone thing won't work in the most serious cases.

15 Now, we maintain that coordination during the
16 early hours has to involve coordination of some things. Those
17 things are appropriately being the subject of Mr. Riley's
18 examination.

19 JUDGE MARGULIES: Let's take a 20-minute recess.

20 (Short recess.)

21 JUDGE MARGULIES: Back on the record. The Board
22 doesn't view the contention as narrowly as Applicant and Staff
23 would, nor do we view it as broadly as Mr. Riley poses his
24 questions.

25 What we cannot do is overlook the last sentence of

1 the contention which states, "The residual responsibilities
2 of the respective county governments, agencies, and the
3 support organizations are either unspecified or inadequate to
4 the task of effective protective response."

5 To a large measure, Mr. Riley's questions do not
6 have the focus that they should have and the directness in
7 coming within the contentions, but the questions, the
8 substance of them, is not wholly beyond the contention.

9 If you would, Mr. Riley, keep to the contention and
10 go into such matters as how the various organizations would
11 coordinate on the matter of rumors and as to whether their
12 plans cover such things, and if they are faced with rumor
13 situations, how they would react to them. I believe that is
14 within the outline of the contention, so you may continue.
15 But see if you can do better in focusing the nature of your
16 questions.

17 MR. RILEY: Thank you.

18 MR. GUILD: Judge, could you tell us what our
19 remaining time is for cross examination?

20 JUDGE MARGULIES: Well, one hour has been used.

21 MR. RILEY: Today we will have how many?

22 JUDGE MARGULIES: Four hours and 15 minutes.

23 BY MR. RILEY:

24 Q Thank you. I am referring to question and answer
25 8-5 in discovery, and the dates of responses are March 20,

1 1984 and March 29, and I would like to have the person
2 preparing the North Carolina Department of Emergency Management
3 response put that for himself, and similarly, for the South
4 Carolina Emergency Protection Department.

5 And reading the question, "The York discussion of
6 decontamination is more detailed than the Mecklenburg. Are
7 such discussions required to meet a common standard? If so,
8 what is it?"

9 And the answer from South Carolina is yes to the
10 first part of the question, and to the second it's, "Those
11 requiring NUREG-0654 and SCTRERP."

12 Now, when I look at the corresponding response of
13 March 29th, the same question, the answer is no to 315, 316,
14 67, 68. Was that your response, Mr. Broome?

15 A (Witness Broome) If directed to North Carolina,
16 it would not be my response.

17 Q Would it be Mr. Harris's response?

18 A (Witness Harris) Could you repeat the question?

19 Q The York discussion of decontamination is more
20 detailed than the Mecklenburg discussion. Are such discus-
21 sions required to meet a common standard? If so, what is it,
22 and MCDEM has signed off on the answer. The answer was no,
23 whereas for South Carolina the answer was yes.

24 A I can't respond to that.

25 MR.GUILD: Mr. Chairman, if I may show the witness,

1 it may help speed this up.

2 (Counsel handing document to witness.)

end 7

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1 A (Perusing document.)

2 (Witnesses Broome and Harris consulting.)

3 MR. GUILD: Mr. Chairman, if the record could
4 reflect that Mr. Broome and Mr. Harris are consulting which
5 is fine.

6 WITNESS HARRIS: I don't know what the result of
7 the examination was.

8 BY MR. RILEY: (Resuming)

9 Q We can put that before you, too. But the answer
10 was simply yes by South Carolina EPD and the second part of
11 the answer is with respect to standard goals required in
12 NUREG-0654 and SETRERT.

13 A (Witness Harris) The only response I could possibly
14 give is that I am familiar with the Mecklenburg plan so I
15 would say the response is correct based upon my knowledge of
16 the Mecklenburg plan.

17 MR. GUILD: For clarity, applicant submitted that
18 response on behalf of the state and local official and
19 perhaps they can simply stipulate that that parenthetical
20 indicates that the response was provided by Mr. Harris'
21 office. What is the name?

22 WITNESS HARRIS: Division of Emergency Management.

23 JUDGE MARGULIES: Is there any objection as
24 entering into that stipulation?

25 MR. CARR: As long as the complete response is in
the record. The response is no, period, see responses 3-15,

3-16, 6-7 and 6-8 which refer to prior interrogatory responses on the subject of decontamination and I am assuming that NCDEM is Mr. Harris' department. Is that correct, sir?

WITNESS HARRIS: Yes.

MR. CARR: So this specific response, 8-5, was provided by Mr. Harris' office.

BY MR. RILEY: (Resuming)

Q Mr. Harris, the question was are such discussions required to meet a common standard and your answer is no.

A (Witness Harris) No because I feel that the various parts of our plan, the North Carolina part, the Mecklenburg part, is adequate as written to meet the requirements of NUREG-0654.

Q Mr. Lunsford and/or Mr. McSwain, would you give your basis for answering yes.

A (Witness Lunsford) If I were the person that answered yes, I would but I am unfamiliar with that response. I would defer to Mr. McSwain. I have a copy of what you have there. I think Mr. McSwain should respond.

A (Witness McSwain) (Perusing document.)

Q Mr. McSwain, I presume you are preparing your answer?

A I am reading the answer. The question as posed, I would say yes.

1 Q Thank you. Now to return to the question of
2 response to rumors. Is there somebody designated in the
3 North Carolina plan whose role it is to follow the state
4 of misinformation, disinformation or what have you? Mr.
5 Harris?

6 A (Witness Harris) The Public Information Office
7 will do that.

8 Q Are there procedures described then for what the
9 Public Information officer will do when he receives an item
10 of false rumor.

11 A I don't have a copy of the plan in front of me
12 but what he would do would be to try to identify the source
13 of the rumor and then provide the correct information if the
14 rumor had been detected as such, as a rumor. We try to give
15 the public frequent and complete information at all times
16 and we hope to prevent many rumors.

17 Q In this context, how do you define rumor?

18 A As I stated earlier to me in this context a rumor
19 would be some misinformation about the ongoing situation.

20 Q Do you have any thoughts as to the scope of this
21 inaccurate information? Is it just something that is passing
22 just between a few contiguous people or is it something that
23 gets out further in the media?

24 A I would say that any misinformation we saw we would
25 treat as a rumor and try to counter with correct information.

8-4

1 Q In your discussion of this in part one on page 56
2 and we can provide you with a copy of this if you would like.

3 A I have it.

4 Q It states that any rumors detected will immediately
5 be reported to the CERT public information officer who will
6 devise methods to overcome rumors, coordinate response and
7 recommend a course of action to the CERT leader. Would that
8 devising of methods the extemporaneous at the time?

9 A The best counter that I know of in dealing with
10 this in exercises and in dealing with it during actual
11 emergencies is correct information, identify the source if
12 you can, the scope of the rumor to determine how much you
13 want to address it in the media, that type of thing. It is
14 very difficult for me to answer with specifics to your
15 hypothetical question. I can't forecast what the rumor is
16 going to be like but the best counter for misinformation is
17 correct information.

18 Q When the language "coordinate response" is used,
19 what is meant?

20 A That means that anything that would be out to
21 counter a rumor by the Public Information officer would be
22 coordinated with all the counties concerned and all the
23 states concerned.

24 Q Mr. Lunsford, is there some formal dealing with
25 the question of what you do about rumors in the South Carolina

1 plan?

2 A (Witness Lunsford) Yes. It is essentially the
3 same. We rely very heavily on our information organization
4 before and after the fact. We also rely very heavily on the
5 utility to a great extent to play a part in that, be
6 available to answer queries from the public.

7 Q I understand you to say then that you would rely on
8 the utility, for instance, on technical things relating to
9 dosage and factual sorts of things, is that what you are
10 telling me?

11 A Among other things but not necessarily confined to
12 that. I would note that our own people in Public Relations
13 have the ability to get answers to even those types of
14 questions by consultation with the DA and/or technical
15 representatives of the utility.

16 Q Do you agree with Mr. Harris then that the major
17 effective approach is by disseminating correct information?

18 A Yes, of course, the truth before and after the
19 fact.

20 Q You would do this through the EBS?

21 A That would be one means, yes, and a primary means,
22 yes.

23 Q You would do it through media contacts with the
24 media center?

25 A Yes. You are speaking about during the course of an

1 event at the plant itself. When I say before the fact, I would
2 note that as we go along at the present time before the plant
3 is licensed and after it is licensed and begins operation,
4 there will be an information and education program to
5 enlighten the public as I have stated here in previous testi-
6 mony.

7 Q The other assumption that both you and Mr. Harris
8 make is that the information that you get and broadcast will
9 be accurate and reliable. I would like to deal with the fact
10 that uncertainties can be present in the course of an
11 accident. I will remind you that the law developing the
12 course of the TMI accident, we went through two or three
13 phases of what really is going to happen, what is really
14 happening now. There was much uncertainty. Obviously, no
15 one is inside the containment. No one is making direct
16 observations on some relevant things. Would you accept that?

17 A Yes. No one is inside the containment building
18 after an accident of the class that TMI was.

19 Q Right. Under these circumstances, there can be
20 uncertainty with respect to interpreting what really
21 is going on. Is that a reasonable position to take?

22 A I don't go along with you completely on that because
23 a lot of progress has been made since TMI and you and I
24 discussed that I was aware of some of it. We now have better
25 technology in determining what has happened, better response

1 so far as putting out correct information early, obligation
2 to the public and as far as we are concerned those of us who
3 are employed by the state government or the county government
4 to inform those systems to whom we are responsible so that is
5 my position on that. I think there has been a great deal of
6 progress.

7 Q What would your course of action be if you found
8 that there was a stubborn journalist who continued to differ
9 with the interpretation and statement of events that you
10 believe in good faith is correct?

11 A I am really not with you on that. Could you state
12 it again? A stubborn journalist who did not agree with the
13 official announcement of what was happening?

14 Q Exactly.

15 A I wouldn't be dealing with those people myself.
16 Our public relations people would be and I think they are
17 experienced to handle that. I really cannot tell you a finite
18 course that would be followed.

19 Q Let me give you an over-obvious example. There was
20 a long period of time when two reporters by the name of
21 Woodward and Bernstein who happened to be quite correct about
22 a matter of substance. Very few people were paying any
23 attention to them. So I am asking how do you deal now with
24 this maverick who is not accepting the official position who
25 may be wrong and may be right?

1 A I would be glad to respond to that. I might say
2 that those of us who work for the public are going to tell
3 the truth insofar as we know and we are not going to hide
4 anything. Had that been the case in the example you are
5 bringing up, a notorious one I might add, the situation would
6 have been entirely different.

7 Q Mr. Harris, do you have anything that you would like
8 to add to that discussion?

9 A (Witness Harris) I think I essentially agree with
10 Mr. Lunsford. We would try to address it with the most
11 correct information we have. We would put out the best and
12 most correct information we have.

13 Q How would you deal with a journalist who took a very
14 different position, one that annoyed you very much because you
15 felt it was destabilizing, but in truth you didn't know if
16 he was wrong or right?

17 MR. CARR: Excuse me. Who didn't know whether it
18 was wrong or right, the journalist or Mr. Harris?

19 BY MR. RILEY: (Resuming)

20 Q Mr. Harris. In other words because there are
21 uncertainties about what actually is the status inside a
22 containment. Mr. Harris in good faith believed what was in
23 the EBS but not really know.

24 A (Witness Harris) Again I would go back to what
25 Mr. Lunsford stated. I would rely on our public information

1 office to try to handle those matters. If you ask me what I
2 would do, if I identified this reporter as a source of
3 misinformation I would certainly listen to what he had to
4 say but in the end I think I would rely on the state people.
5 They are experts in this field in advising what to do and what
6 not to do as opposed to the reporter of whom I have no
7 knowledge of his background.

8 Q Do you foresee the possible use of compulsion with
9 respect to causing him to cease and resist?

10 A No, sir. I believe in the freedom of speech and
11 I believe that is a constitutional right.

12 Q You can see as a consequence then the possibility of
13 generating confusion in the eyes of the public?

14 A No, sir, not if the correct information gets out.
15 I think the public can rely on government for correct
16 information.

17 Q Going back to the discovery documents of March 20
18 and March 29, question 8-6 was, "Does any relevant emergency
19 document discuss long term displacement and relocation? If
20 so, please provide in relevant part." The South Carolina EDP
21 response was "unknown." I take it that means that there was
22 no information available for answering the question, is that
23 correct?

24 MR. MCGARRY: Your Honor, I don't know precisely
25 where Mr. Riley is going but I think it is incumbent upon the

8-10

1 applicant to raise an objection to when they think they should
2 and the subject of long term displacement and relocation is
3 not a subject that is before this Board in any contention so
4 we would object to that line of questioning.

5 MR. RILEY: Depending upon what the emergency is,
6 it is a possible consequence. NUREG-0396 deals with the
7 50-mile ingestion pathway and many documents indicate high
8 levels of containment so that relocation may be required.

9 (Board conferring.)

10 JUDGE MARGULIES: We are dealing with arrival at
11 short term decisions and coordinations. I think your subject
12 matter is one for long term determination. We believe it to
13 be beyond the scope of the contention.

14 BY MR. RILEY: (Resuming)

15 Q With reference to discovery question 8-10, March 20
16 response by Mecklenburg County, Decontamination of property
17 livestock buildings is called for in the Mecklenburg Plan
18 at page 38. Is any information provided as to how?

19 Would the answer that was given be yours, Mr.
20 Broome?

21 A (Witness Broome) I don't have the information.

22 Q If I may.

23 A (Perusing document.)

24 Q Is that your response, Mr. Broome?

25 A Yes, that is correct.

1 Q The response reads, "The procedure will be based on
2 leadership in the state office which has the lead in recovery
3 operation." The question was, is any information provided
4 as to how? Would you be able to tell us how and if not
5 can you refer us to who would.

6 MR. MCGARRY: Your Honor. there was a specific
7 contention raised by the intervenors. It was emergency
8 planning contention five and it talked about plans for
9 recovery and reentry into the affected areas. Some of the
10 topics that were raised under that contention were there
11 was no adequate provision for dealing with contaminated wild-
12 life and off-site domestic animals which is precisely the
13 topic that is addressed in this interrogatory that Mr. Riley
14 is now inquiring about. That contention was rejected by the
15 Board on August 8, 1983. So if Mr. Riley asks can you give
16 us an example of how you would deal with the situation, one of
17 the how's would be, how would you deal with contaminated off-
18 site domestic animals. That was precisely the contention that
19 was thrown out.

20 MR. RILEY: Let's focus the question this way and
21 found out about the leadership here because this is the area
22 now of confusion and ill-defined responsibility.

23 JUDGE MARGULIES: Are we talking short term once
24 again within the seven to nine hours spoken about in conten-
25 tion eight?

1 MR. RILEY: If you have livestock to care of and the
2 plume was going over, quite possibly you are, yes.

3 JUDGE MARGULIES: If that be the case, then I would
4 permit it in terms of who would take the leadership in that
5 situation.

6 WITNESS BROOME: At the bottom of page 38 it says
7 that Mecklenburg County EOC's will coordinate local support
8 during the reentry, et cetera.

9 BY MR. RILEY: (Resuming)

10 Q The context in which we are asking is the early
11 hours of the accident. I thought you were talking about
12 reentry and recovery which doesn't seem to me to fit too
13 well the first seven to nine hours.

14 A You can't have reentry and recovery during the first
15 seven to nine hours if you are going to have an evacuation at
16 the same time.

17 Q So the question then is, what do you do about
18 livestock? Can you do any preventive work with respect to
19 contamination?

20 A If you are talking about evacuation of livestock,
21 Mr. Riley, we would not do that.

22 Q Is there any way to minimize contamination of
23 livestock that doesn't leave the farm?

24 A We are concerned with human lives, not animal's lives.

25 Q It is true but humans do eat animals and I think that

1 is the context.

2 A Humans eat animals only after they have passed
3 government inspection.

4 Q Are property values involved here?

5 A I think that is taken care of in another context and
6 goes beyond contention eight.

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1 Q I think your counsel would be very glad to
2 volunteer such remarks, Mr. Broome.

3 Mr. Broome, in response to 8-15 on March 20th --
4 let me know when you have that before you.

5 A I do.

6 Q The question is, "The Mecklenburg County and
7 Police 'assist' in monitoring part 3, page 6 of the North
8 Carolina Plan, or do they monitor?"

9 The answer is, "The term assist in this context
10 refers to having a law enforcement officer at each
11 decontamination point. Some police officers have received
12 training and could assist in actual monitoring if necessary."

13 And I read that as to indicate that there would
14 be circumstances where police did monitoring?

15 A Some police officers have state training and
16 could assist in actual monitoring, if necessary. You read it
17 correct, Mr. Riley.

18 Q Now, lets go to answer 6-4.

19 A 6? Is this in reference to Contention 6?

20 Q That's right.

21 This one is addressed now to Mr. Lunsford and
22 Mr. McSwain. And the question is, "Under the conditions
23 foregoing, how many police would be available, assuming
24 police will measure contamination, to insure that no persons
25 bypass the contamination that was available per route?"

mm2

1 And the answer is, "Unknown."

2 Perhaps -- this is more particularly yours,
3 Mr. McSwain -- is there a difference between the training
4 of South Carolina and North Carolina police with respect to
5 their role in decontamination?

6 MR. MC GARRY: Objection.

7 JUDGE MARGULIES: Specify the grounds.

8 MR. MC GARRY: Yes, your Honor.

9 The basis for the question is Contention 6. The
10 topic being decontamination. We have already addressed
11 Contention 6. That is a question Mr. Riley could have
12 appropriately asked at that particular point in time. We
13 are not here to discuss decontamination or those specifics.

14 I don't think we should view Contention 8 as a
15 catchall. Contention 8 talks about coordination and some
16 specific contention. It doesn't talk about decontamination,
17 so we object to it on the grounds of relevance.

18 MR. RILEY: The question, your Honor, is: Is
19 there a uniform pattern with respect to the performance of
20 variously assigned officials to the two states.

21 And Mr. McSwain indicates that there is no
22 specific answer here. We have already heard Mr. Broome's
23 answer.

24 WITNESS BROOME: No, you did not hear my answer.

25 MR. RILEY: If you have been withholding up to

mm3

1 now, I would be pleased to hear it.

2 WITNESS BROOME: You just addressed it, and then
3 you came back and addressed it to Mr. McSwain and Mr. Lunsford.

4 MR. RILEY: I meant your previous answer.

5 WITNESS BROOME: That was in reference to
6 Contention 8.

7 JUDGE MARGULIES: Assuming there is a different
8 procedure or a different practice, how does that relate to
9 the contention?

10 MR. GUILD: Mr. Chairman, the information was
11 elicited in discovery. It asked the number of law enforcement
12 persons performing in a specific assigned responsibility
13 under the plan.

14 Now there are divergent answers as between the
15 two state responses. That, in my judgment, I submit, reflects
16 a lack of coordination, confusion and an inconsistency.
17 Now that goes to the substance of our proof on Contention 8.

18 Now, if Mr. Broome wants to take a position that
19 an answer that was accurate as to a previous contention, is
20 inaccurate as to Contention 8, the record should so reflect.
21 If he wants to clarify his answer, he should clarify. But
22 the fact of the matter is the sworn responses to discovery,
23 I submit, reflect confusion, lack of coordination and a
24 contradiction.

25 JUDGE MARGULIES: I don't see the nexus, because

mm4: 1 different practices are pursued in each jurisdiction, why
2 it leads to the conclusion that you state. I don't see the
3 nexus.

4 MR. GUILD: I submit, Mr. Chairman, that if you
5 presume -- the plan simply presumes that a function, a
6 critical function, decontamination will be performed. In
7 order to accomplish that effectively, as required by the
8 Commission's rules, you have to have effective coordination.
9 You have got to get the people there to do it.

10 If one state says they have no idea, or to be
11 more precise, they answer unknown as to how many people will
12 be available to do that function, and another state takes a
13 different position, it seems to me that reflects lack of
14 coordination, effective planning.

15 That is the nexus.

16 JUDGE MARGULIES: I could see where both
17 communities can be effective in their own spheres, using
18 different methods, different procedures and different
19 personnel.

20 MR. GUILD: Judge, I submit that that defense
21 ought to be offered by way of rebuttal by Applicants, if that
22 in fact is their defense.

23 Our view is that it reflects a failure of the
24 plan to be demonstrably implementable, and not -- your posited
25 explanation is not so obvious, nor should it undo the

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1 contradiction that is reflected by the discovery.

2 JUDGE MARGULIES: I am permitting you to bring out
3 the contradiction. But what I am saying is that it doesn't
4 show -- necessarily show the conclusion that you state.

5 WITNESS BROOME: Your Honor, I would like to
6 clear up something if I might.

7 When Mr. Riley was asking me a question, it was
8 in reference to Contention 8, and I defined the term "assist"
9 in reference to law enforcement officers.

10 The next time he addresses a question it is
11 Contention 6. I am not sure who he is addressing the question
12 to with reference to Contention 6.

13 MR. RILEY: The answer was provided by South
14 Carolina. I was addressing the question to Mr. McSwain.

15 Now, with respect to the nexus, I think we can
16 demonstrate it by a few more questions.

17 BY MR. RILEY:

18 Q Mr. Lunsford, is my understanding of the
19 sense of South Carolina correct if I conclude that if there
20 were serious emergency in North Carolina, which strained
21 the resources of North Carolina, the emergency resources,
22 that South Carolina would make available its resources to
23 assist?

24 A (Witness Lunsford) In a general --

25 Q In North Carolina.

mm6

1 A In a general sense, yes, insofar as those
2 resources in South Carolina could be spared, yes.

3 Q And if there were no risk with the emergency
4 at all in South Carolina, but there was a large risk of
5 contamination in North Carolina, is it not reasonable to
6 expect that South Carolina decontamination monitoring people
7 would be assisting in North Carolina?

8 A (Witness Broome) Can I respond to that?

9 Q I would like to hear Mr. Lunsford's answer,
10 please.

11 A (Witness Lunsford) It would have to be an
12 emergency of extraordinary magnitude, because North Carolina's
13 assets exceed South Carolina's, by virtue of the fact that
14 the state is larger, more affluent -- but I am sure that the
15 Governor of South Carolina insofar as he could spare the
16 assets, and it would not endanger the citizens of South
17 Carolina, would certainly respond to the Governor of North
18 Carolina.

19 Q To provide a frame of reference, the worst case
20 in the PES sees 44,000 people exposed to over 200 rem; 270,000
21 exposed to over 25. That is Table 5.1.1.

22 I would say that that would push the assets of a
23 state.

24 Now, correspondingly, Mr. Harris, in the converse
25 situation would North Carolina provide assistance in South

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1 Carolina?

2 A (Witness Harris) With the same stipulations brought
3 up by Mr. Lunsford, I would say yes. If we could spare the
4 resources without endangering our population, yes. I am
5 sure we would.

6 Q Do you see any benefits if the standard operating
7 procedures are then the same in both states with respect to
8 who does what?

9 A (Witness Lunsford) There is a different situation
10 here. Because in South Carolina, for example, within the
11 ten-mile EPZ, we have far more people. And if you are
12 referring specifically to law enforcement, as you were a
13 moment ago, about how they are used, it is entirely conceivable
14 and probable that they would be used for different purposes.

15 In South Carolina in the ten-mile EPZ, you have a
16 larger number of people. We envision that the law enforcement
17 people would be used primarily to control evacuation at their
18 traffic control points, et cetera. That is not to say that
19 they could not monitor at roadblocks.

20 Whereas we have access nearby to a number of
21 people who could do monitoring, in Cherokee County, for
22 example, and we would use our trained monitoring personnel
23 for that, rather than taking the law enforcement people away
24 from their primary duty of traffic control and security.

25 I can foresee an entirely different situation

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1 in North Carolina inside the ten-mile EPZ.

2 Q Mr. Broome, in the March 20th response, question
3 8-17 --

4 A (Witness Broome) I need a copy of that, Mr. Riley.
5 I have only got the prefiled testimony on Contention 8. I
6 don't have the entire documentation.

7 (Document handed to witness)

8 Q The Emergency Management Office of Mecklenburg
9 County is given several responsibilities during emergency

10 How many are on the EMO staff? What are their
11 job titles? Is the Office of Director filled?

12 At the time of your answer you stated the
13 current EMO staff is as follows: Administrative Officer, 1;
14 Secretary, 1.

15 Would you like to amend that?

16 A We have got an Acting Director now.

17 Q Right. Does that make your total staff 3?

18 A That's correct.

19 Q How many days a week do the people in your office
20 work?

21 A Two of us work seven days a week.

22 Q How many hours a day?

23 A 24 hours a day, if necessary.

24 Q Is your office open seven days a week, 24 hours
25 a day?

mm9

1 A No. People have access to us.

2 Q And you are suggesting that the way in which the
3 state planning requirement of availability 24 hours a day
4 will be met as your availability and the Director's
5 availability 24 hours a day?

6 A I would say that. And also, Mr. Riley, that in
7 the absence of myself of an Acting Director, there is a
8 designated representative within the emergency response
9 organization of either city and/or county that can act in our
10 behalf as outlined in procedures.

11 Q All right.
12 Would you name them?

13 A Name what?

14 Q These persons.

15 A Well, you can have a Fire Chief and/or representa-
16 tive of either city and/or county; you can have a police chief
17 of city and/or county or representative thereof; you can have
18 an individual from the medical community. In specific -- I'm
19 not sure, what are you after, Mr. Riley?

20 Q Well, really, Mr. Broome, that is in a sense my
21 prerogative.

22 What I am trying to relate is the capability of a
23 three-person office to a 24-hour a day, 7-day a week
24 responsibility for events some of which may have fairly long
25 continued duration. The TMI accident was in a pretty active

mm10 1 state for, I think it would be correct to say five to seven
2 days.

3 And the question is, when EMO people were exhausted
4 and needed to be relieved, who specifically would stand in
5 for them? And in the present context, would you provide the
6 names of the people whose categories you just gave us.

7 A Well, you have got R. M. Blackwell, who is Chief
8 of Charlotte Fire Department; you have got Buddy Wilson, who
9 is the Operations Chief of the Charlotte Fire Department;
10 you have got Dan Carpenter who is Fire Administrator Officer,
11 Mecklenburg County; you have got John Knowles, Fire Marshall
12 Mecklenburg County; you will have additional people trained
13 in connection with Luther Fincher's position, not only as
14 Acting Director, but also Hazardous Material Coordinator; you
15 have got a person that acts in his behalf in his absence who
16 could also act in behalf of Emergency Management in the
17 absence of Fincher and myself; the Duty Dispatcher at that
18 County Warning Point under existing draft procedures will have
19 authority to take any action deemed necessary to mobilize
20 any resource deemed necessary.

21 Q All right. Then you have given us this catalog
22 of people. Tell us which ones would correspond to you in
23 terms of training with respect to dealing with this sort of
24 a problem.

25 A At this point in time, Luther Fincher and John

mm11

1 Knowles.

2 Q Would you care to comment on a problem this suggests,
3 on 8-20. Do you have that in front of you?

4 A Yes, I do.

5 Q The question was, "The Emergency Management Office
6 is a link in the notification chain. Is it open continuously?"

7 The answer was, "No, the EMO is not open
8 continuously."

9 Would you tell us how you and Mr. Fincher can be
10 reached when you are not in the office?

11 A Pagers, and/or radio equipment.

12 Q You do carry pagers?

13 A I don't, Mr. Fincher does. I've got it on order.

14 Q You have it on order.

15 A And, of course, there is also the telephone.

16 Q Do you know what the saturation level is for
17 the Southern Bell System, of which I assume you are a
18 subscriber?

19 A Yes, I am a subscriber. And the saturation
20 level would not matter to me since I have got alternative
21 means of communication. But I do not know.

22 Q When you say alternative means of communication
23 you have reference to the beeper you will be getting?

24 A I've got radio communications in my vehicle now,
25 and I can be accessed indirectly using radio communications.

mm12

1 The radio communications that I referenced has
2 been on order. When it is available I will have communica-
3 tions with every emergency response organization in city
4 and county.

5 Q Is the radio equipment that you refer to in your
6 automobile the sort that announces there is a broadcast to
7 you? Does it behave as a beeper?

8 A It can make an announcement that will put me
9 in communications with an alternative base communications
10 center which will provide me with information with regard
11 to a course of action that someone wanted me to take.

12 Q Will that require it be playing a part -- will
13 that be required that it was turned on?

14 A I am assuming if I am driving a vehicle, radio
15 equipment is on.

16 We can hypothesize to the point that we could get
17 ridiculous. But if I am in the vehicle, I can be accessed.
18 If I am at home, the telephone can reach me. If they cannot
19 contact me with any one of those methods, they can send a
20 police car out there to me. They do have my home address and
21 phone number and they know where I live.

end T9

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1 Q If you'll look at 8-23 in the same discovery
2 document, --

3 A Yes, I have it.

4 Q The question is, "Who are the three RDO's and where
5 are they employed. Do they have beepers for being continuously
6 on call?"

7 I take it, it is your answer, "There are not three
8 RDO's for Mecklenburg County; I only know of one, and this
9 person does not carry a beeper." Is that your answer?

10 A Yes, it is.

11 Q And it is correct?

12 A Yes, it is.

13 MR. CARR: Excuse me, what is an RDO?

14 WITNESS BROOME: Radiological defense officer,
15 which is a war time designation.

16 BY MR. RILEY:

17 Q Do you have available to you the North Carolina
18 State Plan?

19 A (Witness Broome) I do.

20 Q Kindly refer to page 26, Item C.2.

21 A Which part?

22 Q Part 3. Part 3 is the Mecklenburg part, is it not?

23 A That's correct.

24 Q I will read Item 2 under C, General Division of
25 Accident Assessment. "Mecklenburg County has three

1 radiological defense officers, RDO's, trained in monitoring
2 and sampling; fire and rescue personnel within the area
3 have been trained by the RDO.

4 Could you resolve for us the conflict between your
5 testimony and this statement in the plan?

6 A There is no conflict, Mr. Riley. I have made a
7 correction to that particular paragraph.

8 Q I beg your pardon?

9 A I have made a correction to that particular
10 paragraph in reference to Part 3, Page 26, Item C.2. That
11 correction has been submitted to Raleigh, and when the changes
12 come out that correction will be made.

13 Q Is it correct to say that you have not advised the
14 parties?

15 A What parties?

16 Q The parties to this proceeding.

17 A I was only aware of the element that you brought
18 out in reference to Item 8.23. I did not bring that particular
19 information with me, and that is not a part of the testimony
20 that I filed in reference to this contention.

21 Q Is it the Applicant's counsel's understanding that
22 there's a continuing obligation to keep parties informed of
23 changes?

24 MR. CARR: Yes, it is, Mr. Riley. The date of
25 this response was -- on my copy -- was March 20, 1984, and

1 if I follow this colloquy, Mr. Broome has just testified
2 that when he provided this interrogatory response he corrected
3 the plan. And that response was served on you.

4 MR. GUILD: The problem, Mr. Chairman, is the plan,
5 it appears, has been offered into evidence by Applicants as
6 presumably accurate and complete and it is apparently not
7 accurate and complete and subject to this change. And it would
8 be helpful if, in trying to prepare our case, we had an
9 understanding that the document that's in evidence is not
10 accurate and complete and may be subject to modification, as
11 we now understand.

12 It has been offered and purported to be an up-to-
13 date, complete version of the plan and apparently it is not.

14 I would submit that Applicants, if they knew about
15 the inaccuracy in the plan or the change did have an obligation
16 and do have an obligation to inform the Board and parties so
17 that we're all not wasting effort nor premising either questions
18 or findings later by this Board upon inaccurate or incomplete
19 documentation.

20 WITNESS BROOME: Your Honor, what I'm holding here
21 begins with 8.3 on page 21. None of the questions that I have
22 seen up to this point were addressed in the pre-filed
23 testimony that I used in Contention 8. If that particular
24 question had been addressed to me when I made the corrections
25 this morning prior to these proceedings, I would have addressed

1 the RDC situation. That was not one of the questions with
2 regard to the testimony.

3 If this is part of the official testimony, then I
4 think I, through some mistake -- maybe I didn't know about it.
5 But I don't know where this is coming from, to be honest
6 with you.

7 MR. RILEY: The question, Judge Margulies, is how
8 well has the Act been put together. It would seem that there's
9 a glitch in it.

10 MR. GUILD: Perhaps I could just ask this. I've
11 been operating under the presumption that we have a current
12 version of the planning document. With respect to the
13 Mecklenburg County portion of the plan, if you'll recall, we
14 spent a fair amount of time on the presumption that there are
15 25,500 evacuees assigned to the University of North Carolina
16 at Charlotte, only to learn that it was a change that had
17 been two years before, but the parties weren't informed of it
18 until the question was asked on cross examination.

19 I would ask that if there are any other changes
20 that the parties know of to the plans that are in evidence,
21 that the parties be informed of those changes so that we have
22 a complete and accurate set of plans. And I would make that
23 by way of a specific motion, that Applicants be required to
24 provide us with whatever corrections, additions or changes
25 they have knowledge of with respect to the plans that they

1 have offered into evidence. I think that's a part of our
2 continuing obligation to present information to this Board
3 and parties.

4 JUDGE MARGULIES: Is there anything else that has
5 to be brought up to date?

6 MR. CARR: Not that we know of. And I would out
7 again that Mr. Broome -- as I understand what he says, and if
8 I understand the situation correctly, these plans are corrected
9 at periodic intervals, and he testified that he had sent this
10 in for correction. And I would assume that the new version
11 hadn't come out yet.

12 WITNESS BROOME: That's correct, Your Honor.

13 MR. GUILD: My point is if you send in other things
14 for corrections, or if other persons have made corrections to
15 the plan that make the document that we all rely upon
16 inaccurate, misleading or incomplete, that they inform the
17 parties. It's a common courtesy, and we believe it's a
18 basic element of due process that a document not be offered
19 as truthful that is, in fact, not truthful.

20 JUDGE MARGULIES: Have you sent in any other
21 corrections, Mr. Broome?

22 WITNESS BROOME: Yes, sir, Your Honor. Other
23 corrections have been submitted and other corrections will
24 continue to be submitted. We, to my knowledge, and in working
25 with North Carolina in Raleigh with regard to this plan, and

1 also the McGuire plan, changes can occur at daily intervals
2 in some situations, so it's a continuing process. And I
3 could give Mr. Guild the necessary corrections with reference
4 to Part 3, and tomorrow they might be obsolete because planning
5 is an ongoing process. It's very, very dynamic with regard
6 to the situation and regulation and conditions and resources.

7 Therefore, what you have today might be valid for
8 a year, or it might be valid for only one day because of the
9 constant changes that are necessary for implementation.

10 MR. GUILD: I appreciate that, Mr. Chairman, and
11 I won't quibble with Mr. Broome about the point. My concern
12 is that this is litigation, and we're all big boys. This is
13 a court. We have ethical and evidentiary obligations. If we
14 have a target that has been offered as a true and accurate
15 and complete piece of documentary evidence and, in fact, it
16 is not so, we may have Mr. Broome's observation, but I submit
17 it's the obligation of the sponsor of that exhibit to
18 represent it accurately.

19 And in this instance, if we're all wasting time on
20 plans that are not current and accurate, we move that those
21 plans be made as current as possible through the circulation
22 of whatever necessary amendments or changes have been proposed
23 or made to them. It's simply not effective to say it may
24 change tomorrow; therefore, we're not going to feel obligated
25 to tell you about changes that occurred yesterday.

1 WITNESS BROOME: As I indicated, the radiological
2 defense officer is a wartime designation. The question was
3 raised, as I understand it, in the original discovery with
4 regard to the people who are trained in radiation and radiation
5 monitoring. That person is trained, and he does have knowledge
6 with regard to that, but it would have absolutely no bearing
7 at all with regard to the ability to implement the items as
8 outlined in Contention 8.

9 MR. RILEY: Your Honor, it's part of the plan
10 under Accident Assessment referring to the three RDO's. It
11 seems to me it's fair game for us to take this matter up.

12 I would like to know what the RDO is and I'd like
13 to know what the change in text has been.

14 JUDGE MARGULIES: Before we get on to that, it will
15 be Applicant's counsel's responsibility to keep those exhibits
16 up to date. We don't look to Mr. Broome; we look to Applicant's
17 counsel who submitted the documents.

18 Let's go to lunch now and come back to that when
19 we get back. We'll take an hour and 15 minutes recess.

20 (Whereupon, at 12:30 p.m. the hearing in the above-
21 entitled matter was recessed for lunch, to reconvene at 1:45
22 p.m. the same day.)

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AFTERNOON SESSION

(1:45 p.m.)

JUDGE MARGULIES: On the record. You may
continue with your examination, Mr. Riley.

Whereupon,

E.H. HARRIS, JR.,

BOB E. PHILLIPS,

LEWIS WAYNE BROOME,

WILLIAM M. MC SWAIN,

STAN D. COLEMAN,

P.R. LUNSFORD and

PHILLIP STEVEN THOMAS,

the witnesses on the stand at the time of recess, resumed the
stand and, having been previously duly sworn, were examined
and testified further as follows:

CROSS EXAMINATION - Resumed

BY MR. RILEY:

Q Discovery question 8.28 by the Intervenors inquired
into wherein is vested the authority called public transportation
buses, and is there legal authority to order drivers into an
EPZ under conditions of potential high radiation doses. And
South Carolina's answer, through the Attorney General's office,
was, "Although not specifically identified, the Governor's
emergency powers may provide authority as publicly-owned
transportation government drivers." The second part of the

1 question is not addressed.

2 Is anyone from South Carolina in a position to tell
3 us about that "may provide authority"? Perhaps you,
4 Mr. Lunsford.

5 A (Witness Lunsford) No. That question was submitted
6 to the Office of the Attorney General for answering, and I
7 can't embellish upon that answer myself.

8 Q In other words, they hedged and you can't do better
9 than that.

10 A Well, I'm doing as well as I can to respond to
11 your request.

12 Q Would you be able to answer as to the legal
13 authority to order drivers into an EPZ under conditions of
14 potential high radiation dosage?

15 A No, I can't address that.

16 Q Is that not relevant to the state's emergency
17 plan?

18 A I'm sure it is, but I'm sure there are people
19 who can address it, but I say I cannot.

20 Q Is there someone on the panel who could?
21 Mr. McSwain perhaps?

22 A (Witness McSwain) Not I.

23 Q Is it germane to the execution of the plan to
24 know whether or not you can order drivers into a high
25 radiation area?

1 A I don't know, sir.

2 Q Well, if there are people being exposed and if
3 they're not moved they will be even more exposed, bear in
4 mind that the goal of NUREG-0396 is dosage minimization. Is
5 it not reasonable, then, to get those people out of there,
6 even if it means the dosage for the drivers?

7 A (Witness Lunsford) I'll answer that. Yes, of
8 course, and I think the answer that was given covers what you
9 are addressing in that the answer is, although not specifically
10 identified, the Governor's emergency powers may provide
11 authority as to publicly-owned transportation and government
12 drivers. Would that not indicate that the Governor has the
13 authority?

14 Q With the proviso of "may", it does.

15 A Yes, it's at his discretion under the Emergency
16 Powers Act.

17 Q Now, this is perhaps a legal question, but does
18 the government authority extend to people who are not employees
19 of state government like the bus drivers?

20 A I don't know the answer to that.

21 Q Mecklenburg County also responded to this question.
22 I believe it would be Mr. Broome. The answer was the authority
23 to use city buses is with the department head and ultimately
24 with the city council. I have no problem with that. And
25 the answer is, "I am not aware of legal authority to order

1 drivers in the area." Is that still your position, Mr. Broome?

2 A (Witness Broome) If I can elaborate, I will express
3 my position.

4 Q Yes, but would you please respond to my question
5 first?

6 A I'm not aware of legal authority to order drivers.
7 The ownership of the buses is the City of Charlotte. The
8 drivers -- if we have sufficient emergency response personnel
9 to drive the buses, as long as we have control over the buses
10 we have control over the resources; therefore, we could
11 implement the procedures.

12 Q Well, when I said drivers, I didn't mean bus
13 company employees, necessarily. So is your answer still in
14 that context that you're not aware of legal authority to
15 order the drivers?

16 A I think you get back to order and compel, Mr.
17 Riley, with regard to terms and defining terms in specific
18 details. I don't see a problem getting the necessary drivers,
19 whether it's through a recommendation, a request, an order,
20 to take X number of buses to X locations to pick up X number
21 of people.

22 We requested drivers during a chemical fire. They
23 were City of Charlotte union bus drivers. They went in
24 there on their own at our request to do so. We didn't order
25 them; we requested it and they did it.

1 Q Well there was a hazard that they could both see
2 and smell, was there not?

3 A I don't know that you distinguish between a deadly
4 hazard as whether you can see it or smell it or hear it.
5 If it's deadly, it's deadly.

6 Q Well, if it's something visible, you can avoid it.

7 A Well, if you're in the middle of it, you don't
8 necessarily avoid it.

9 Q What I'm pointing out, Mr. Broome, is -- and I don't
10 wish to argue the case -- is that you can move away from it
11 if you can detect it.

12 A You can move away from radiation also, Mr. Riley.

13 Q If you can detect it.

14 A If there's instrumentation in place and qualified
15 personnel to detect it.

16 Q Agreeing on that, would the bus drivers have that
17 in this hypothetical case where they're asked to go into a
18 high radiation zone?

19 A According to the protective action guides, --
20 MR. CARR: One clarification. If we're still
21 referring to the interrogatory, the interrogatory is
22 conditions of potential high radiation dosage, not a high
23 radiation zone.

24 BY MR. RILEY:

25 Q Not wishing to quibble, but you have a better chance

1 of getting high radiation doses in a high radiation zone than
2 not.

3 A (Witness Broome) Would you repeat the question?

4 Q Yes. In the case of sending bus drivers into a
5 situation where there is a potential high radiation dosage
6 hazard, would they be accompanied by people with instrumenta-
7 tion that could advise them as to the dosage level, dosage
8 rate?

9 A The option of sending a person such as you indicated
10 would be available to us.

11 Q The option would be available. Would you say it
12 could be acted on?

13 A The option would be available, Mr. Riley.

14 Q In the first seven to nine hours of the accident
15 now, Mr. Broome, I think it's reasonable to hypothesize that
16 the Governor has not yet issued a decree to compel. If you
17 have information that there are people in a zone where there
18 is high plume radiation who should be moved out by bus, would
19 you let a prospective bus driver know that he risks getting a
20 dosage in excess of some certain amount?

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1 A It would go back to what Mr. Harris has indicated
2 and what Mr. Lunsford has indicated with emphasis. We would
3 anyone including members of emergency response organizations
4 of the potential or presence there of danger.

5 Q From that, may we conclude that their actions would
6 be voluntary in the sense that they could either consent or
7 not consent to drive?

8 MR. CARR: Your Honor, I don't want to start off
9 after the luncheon recess with this again. We have had this
10 continuing dispute this morning over what is in and out of the
11 contention. This it seems to me is clearly within contention
12 14 and 15, the evacuation time study. We are not talking
13 about matter of confusion or of lines of communication among
14 political jurisdictions here.

15 Now Mr. Riley wants to know if there is certainties
16 that the bus drivers, it sounds to be me like, can be ordered
17 to go in to evacuate people. That is a time evacuation
18 study question.

19 MR. RILEY: It is a question of how well the plan
20 is going to work. Can you get people to do necessary jobs or
21 not? Will there be confusion in this instance?

22 MR. CARR: If that is the case, we needed only one
23 contention in the whole case, will the plan work.

24 MR. GUILD: Counsel keeps splitting hairs again,
25 Judge. You can't segregate these things out and we don't have

1 Mr. Kulash here. We are not talking about his model. We are
2 not talking about time. We are talking about people who are
3 assigned responsibilities under the plan being gratuitously
4 presumed under all circumstances to perform their assigned
5 tasks without holding up those assurances to the kind of
6 scrutiny that I think is appropriate. The question seems a
7 very straight forward one and that is, won't you concede that
8 there are circumstances where you may have imprudently
9 presumed that people without question will carry out tasks
10 despite their personal exposure to radiation hazard.

11 It seems an appropriate line of questioning to
12 me.

13 JUDGE MARGULIES: We will sustain the objection.
14 We believe you have wandered away from the main course of the
15 contention, Mr. Riley.

16 BY MR. RILEY: (Resuming)

17 Q In 8-30 of March 30 there is a question of how many
18 social services' employees are there who will all be available
19 to operate shelters. There is a question, are a sufficient
20 number of social service employees available to assure
21 round-the-clock manning. The response does not indicate
22 anything about the provision in this early period of reception
23 at centers of medical personnel such as doctors, nurses and
24 medical technicians. Would you tell us the status of the
25 plan of that matter, Mr. Broome?

1 A (Witness Broome) South Carolina, I believe, addressed
2 that.

3 MR. CARR: I object to this, Your Honor. We may not
4 have objected to the interrogatory because the standards are
5 different but now we are into the sheltering question again
6 and the availability of services there. We had a whole panel
7 on for two days talking about that. We had the Red Cross,
8 we had the Salvation Army, we had Mr. Gregory, we had Mr.
9 Kneeves and numerous questions along those lines were addressed
10 to them.

11 MR. GUILD: He can't have it both ways, Mr. Chairman.
12 He argues originally that we can't ask about a discovery
13 question because the question happened to have been framed
14 under another contention and that was six. Now we have a
15 discovery question clearly framed under contention eight,
16 not objected to when it should have been objected to on
17 relevance grounds. The record should reflect applicants
18 objected to every objectionable question where there is
19 any conceivable relevance objection in discovery. The record
20 is replete with their having been less than forthcoming in
21 that regard and now the question is asked was exactly the same
22 point. You say people have responsibilities under the plan,
23 can you count on them being able to perform those responsibil-
24 ities.

25 MR. CARR: We object first to the characterization

1 of being less than forthcoming on discovery. If Mr. Guild
2 had read these he would see there aren't objections in them.

3 (Board conferring.)

4 JUDGE MARGULIES: Are you going to sustain the
5 objection on the same grounds we sustained the objection to
6 the previous question.

7 MR. GUILD: Mr. Chairman, may we ask that the
8 answers to the interrogatories be received by way of an
9 offer of proof with respect to both this question and the
10 last question.

11 JUDGE MARGULIES: The record will so reflect the
12 offer of proof.

13 (Whereupon, the requested offer of proof is so
14 reflected.)

15 BY MR. RILEY: (Resuming)

16 Q The Mecklenburg response to 8-31 to the question,
17 how many persons is EMO committed to provide for the
18 monitoring program. with current staffing EMO will provide
19 none.

20 How does that relate, Mr. Broome, to plan?

21 A (Witness Broome) How does it relate to plan?

22 Q Yes. How many persons was EMO going to provide
23 for monitoring according to the Plan?

24 A If I recollect part III of the plan, EMO was not
25 going to provide any. I think the roles and responsibilities

1 under EMO, part of our responsibility was to provide training
2 reference radiation monitoring. In that, we have fulfilled our
3 obligation.

4 Q All right. I gather there is a semantic distinction
5 there. Provide, of course, means equip people to carry
6 function and your answer was that you would not provide people
7 from your organization but that you would have trained
8 people to fill this role.

9 A I interpreted question 8-31 as within the context
10 as somebody within the emergency management office that is
11 going to physically go to a specific location and do monitoring.
12 With that interpretation in mind the EMO will not provide any.
13 We did provide training for those who will do it.

14 Q In part III of the North Carolina Plan, page 29,
15 under the heading of communications to the public part B says
16 "Instructions concerning the use of drugs or medicines of
17 offset the effects of radiation."

18 Would this be in reference to potassium iodide
19 administration?

20 A Yes.

21 Q Are supplies available for the general public for
22 the administration of potassium iodide in Mecklenburg?

23 MR. CARR: Objection, Your Honor. We went through
24 that this morning. That issue is not in this proceeding.
25 It has already been ruled on by this Board this morning.

1 MR. RILEY: The concern is whether instructions
2 were something that may or may not be a possibility.

3 MR. CARR: Mr. Riley, I understand that but you
4 tried to raise the contention and it was ruled out of litiga-
5 tion by the Board.

6 MR. GUILD: That has nothing to do with the subject
7 of the question. It is a fact that we sought to compel the
8 general distribution of potassium iodide, a radioprotective
9 drug by way of a contention in this proceeding. The previous
10 Board ruled that there was no legal basis for such a
11 compulsion and dismissed the contention. That doesn't answer
12 the question whether a plan that provides for in part
13 instructing persons to use or distribute or employ such
14 radioprotective drugs is in effect a plan where use of such
15 drugs is a key element to sending emergency workers into
16 high radiation areas.

17 JUDGE MARGULIES: The effectiveness has to relate
18 to the coordination of the various bodies involved. Once
19 again this is completely outside the contention. It is a
20 question really solely to the adequacy of the plan itself.

21 MR. RILEY: Judge Margulies, we haven't heard what
22 South Carolina would do. We haven't really heard what North
23 Carolina would do. We have already established that under
24 certain circumstances South Carolina personnel would visit
25 North Carolina to assist and vice-versa. So it seems to me a

12-7

1 matter of relevance to find out if there is a common policy
2 here, a common capability.

3 MR. MCGARRY: With respect to that the Board
4 specifically ruled the provision that radioprotective drugs
5 for the general public in a plume EPZ is not required.

6 MR. GUILD: That is what we said earlier. We don't
7 need to say it again, Mr. Chairman. The point though is
8 that emergency workers cannot be relied upon to perform
9 critical functions unless there is an effective plan to
10 teach and then implement the distribution of radioprotective
11 drugs under certain circumstances.

12 Protective actions will not work unless they are
13 done effectively. The plans call for it. It is a matter of
14 effective coordination among the various levels of planners and
15 implementers and emergency workers to see whether or not
16 that part of the plan will work. You can ignore it. You
17 can put blinders on it and pretend that it is not a critical
18 element of the plan. It is a critical element of the plan.
19 The fact that there is apparent confusion on the point is
20 material to contention eight. Whether the parties want to
21 ignore that as a potential problem or not, it remains a
22 potential problem and this record ought to reflect it.

23 MR. CARR: If I may, Your Honor, what we have seen
24 here today is a journey through the plan and when a sentence
25 in the plans strikes the interest of Mr. Riley he stops and

12-8

1 asks questions about it. That is not the purpose of the
2 contention.

3 MR. GUILD: The springboard for the question is
4 an interrogatory that was posed under contention eight. It
5 was not objected to by applicants. It clearly was presented
6 as part of an underlying factual basis for the contention.
7 Applicants can claim no surprise. They have had the interro-
8 gatory questions for months and now we hear Mr. Carr complain-
9 ing that somehow he has been hookwinked by a line of
10 questions on contention eight that he is surprised about.
11 He should have known about it for months.

12 MR. CARR: The interrogatory that we are talking
13 about says how many people is EMO committed to provide
14 for the monitoring program. With current staffing, EMO
15 will provide none. Now we wander through the plan and pull
16 out something about potassium iodide which has been ruled out
17 by the Board.

18 (Board conferring.)

19 JUDGE MARGULIES: Mr. Riley, it would seem to be
20 appropriate that if you are trying to ask how the various
21 municipalities will react where one plan calls for the
22 administration of a drug and the other does not, what they
23 would do under the circumstances, you may ask that. But just
24 to deal with whether the plans call for the administration of
25 potassium iodide or do not, I don't think we are interested in

1 that, per se.

2 BY MR. RILEY: (Resuming)

3 Q I am sure you gentlemen heard the question just
4 phrased by Judge Margulies. Would you please respond to
5 the question as he phrased it, Mr. Broom?

6 A (Witness Broom) As I understand His Honor with
7 reference to the question, number one the recommendation for
8 the administration of KI, potassium iodide, would come from
9 the state health pharmacist with regard to North Carolina.
10 He would make that recommendation based on information that
11 he would be receiving from the radiation protection section.
12 North Carolina would administer KI only to emergency workers.
13 We will not administer it to the general public. For
14 Mecklenburg County, that procedure will be handled by the
15 environmental health department which has access to the
16 potassium iodide. It is in their inventory under their
17 control and would be administered based on the recommendation
18 out of the state office.

19 Q Would that again be restricted to emergency
20 workers?

21 A That is correct.

22 Q Mr. Phillips, what is the status for Gaston?

23 A (Witness Phillips) Same procedure.

24 Q Mr. Lunsford or Mr. McSwain, what is the posture of
25 that matter in South Carolina?

1 A (Witness McSwain) Can you repeat your question?

2 Q What are the ground rules for the administration
3 of potassium iodide in South Carolina and how do they relate
4 to those in North Carolina?

5 A Under consultation with the Department of Health
6 and Environmental Control the emergency preparedness division
7 and DHEC would make that decision whether or not they should
8 be issued to emergency workers and in some extreme cases to
9 some of those people who could not be evacuated.

10 Q In that respect then your plan does differ from the
11 North Carolina Plan?

12 A (Witness Lunsford) We don't know.

13 A (Witness McSwain) No.

14 Q Perhaps Mr. Harris could address that?

15 A (Witness Harris) No. Our plan is the same.
16 Those institutionalized persons who cannot be moved because
17 the movement would create a greater hazard for them than
18 remaining, then we would administer potassium iodide to them
19 also once it had been recommended by the State Health Director.

20 A (Witness Lunsford) I might add to Mr. McSwain's
21 testimony that the Director of the Department of Health
22 and Environmental Controls would be the man who would
23 physically order that distribution or would conduct the
24 distribution. The distribution of KI would be done through the
25 Public Health Service in South Carolina by the county health

12-11

1 physician.

2 A (Witness Broome) I think it should be noted that
3 potassium iodide in the State of North Carolina is a
4 prescription drug. You have to have a prescription to obtain
5 the drug.

6 Q Under these circumstances would it be necessary for a
7 doctor to prescribe it for each individual case?

8 A Not for emergency workers because there are different
9 rules and regulations with reference to that. I was making
10 that comment in reference to the general public, Mr. Riley.

11 A (Witness Lunsford) In the case of South Carolina
12 we do have physicians in the locale doing the distribution
13 however to be under the control and direction of a physician.

14 Q Let's try to concretize this a little bit, Mr.
15 Lunsford. You have a number of workers out in the field
16 say several hundred. I think that is a reasonable number
17 in terms of past testimony. And the decision is made on
18 the basis of radiation level information that these people
19 should receive KI. Is it true that they are not carrying it
20 with them?

21 A That is to the best of my understanding, yes and if
22 there is a decision to distribute it I would take the most
23 likely case would be that it would not be distributed to all
24 of them because all of them would not be affected throughout
25 the zone.

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1 Q All right, with respect to people for whom it
2 was intended if it is appropriate, it would have to be
3 personally delivered in the field by people in other
4 departments?

5 A I'm not familiar with the mechanics, per se.
6 If it would not be to them, it would be in an accepted
7 location where they would have access to it in a ready fashion.

8 Q Mr. McSwain, do you have any other information on
9 mechanics?

10 A (Witness McSwain) No.

11 Q Mr. Thomas?

12 A (Witness Thomas) None.

13 Q In a corresponding manner in North Carolina,
14 assuming that the order is given to distribute it, what would
15 be the mechanics of distribution for those who were thought
16 to require it?

17 A (Witness Harris) Likewise it would depend on exposure of
18 dose rate that was going on at the present time that the
19 order was given. I also am not familiar with the nuts and
20 bolts of exactly how it would be distributed.

21 I assume that at various distribution points it would
22 be distributed, an order to be given if needed, to report to
23 these points. That would be the simplest way to do it.

24 Q Question 8-37 has to do with the pills that
25 are required under part 3, page 49 of North Carolina Plan.

mm2

1 An important element of the prospective evacuation
2 course is people to be evacuated.

3 A (Witness Broome) Who are you addressing the
4 question to, Mr. Riley, and what page are you referencing?

5 Q I have not directed the question yet. I am
6 referencing part 3 of the North Carolina Plan on page 49,
7 specifically the Section B which is called drills.

8 My question is, is not an important element of the
9 emergency procedure, the actions of people who are to
10 respond -- not officials, namely the public. Is that correct,
11 Mr. Harris?

12 A (Witness Harris) Please repeat the question, sir.

13 Q Yes. Are not the people who are to be evacuated
14 an important element of the emergency evacuation procedure?

15 A Yes, in a real emergency.

16 Q In a real emergency.

17 Now, none of the drills called for the participa-
18 tion of the public, did they?

19 MR. CARR: Your Honor, I am going to object. When
20 the original contentions were filed, the Intervenors raised
21 participation of the public in full-scale real-life drills.
22 Upon at least two occasions the Licensing Board ruled that
23 out as being contrary to the regulations. And I have
24 reference to an order of September 29, 1983 at pages 6 and 7.

25 MR. RILEY: We have no dispute with Mr. Carr

mm3

1 with reference to that issue per se. The question is, if
2 we are dealing with matters of confusion and coordination
3 where you are talking about the beneficial effect of drills
4 for the officials who are involved, is it not relevant to
5 inquire about the role of people who will be present in the
6 largest number, the evacuees?

7 MR. GUILD: And the fact that as a matter of
8 remedy in this proceeding we are unable to get the relief
9 of requiring mandatory public participation exercises we
10 believe is called for, does not make the question irrelevant
11 whether or not relying on an exercise which is mostly a
12 paper exercise involving a limited number of actual
13 implementing officials is proof that adequate coordination
14 and assignment of responsibilities is demonstrated by that
15 exercise.

16 It is Applicants testimony that such exercises
17 so demonstrate. It is our effort to impeach that testimony by
18 cross examination.

19 Mr. Carr is wasting us a lot of time, Mr. Chairman
20 and our nickel is fast evaporating with these repeated
21 objections that don't go to relevance, but just go to
22 nitpicking, if you will.

23 MR. CARR: The subject matter of the hearing we
24 are on -- I am reading from pages 6 and 7 of that Board
25 Order, Contention 19 --

mm4

1 MR. GUILD: The record speaks for itself what
2 the Judge said. We are not disputing that.

3 MR. CARR: Then let's stick by the record,
4 Mr. Guild, because that Board moved under 10 CFR Part 50,
5 Appendix E that required exercises are to be conducted
6 "without mandatory public participation."

7 MR. GUILD: And, Mr. Chairman, we don't dispute
8 that, but we are wasting valuable time by rearguing over
9 and over again the point. The fact that a contention has
10 been dismissed for that reason does not make irrelevant the
11 fact of whether or not such an exercise with such participation
12 exists, has been conducted and demonstrates the adequacy of
13 coordination, which is the subject of Contention 8.

14 Mr. Carr can't just wave his magic wand and
15 remove a fact from the universe of facts because of the prior
16 ruling of this Board or any other Board. The fact exists
17 whether there has been a public participation exercise or
18 not.

19 JUDGE MARGULIES: Staff?

20 MR. JOHNSON: I don't believe the question really
21 has gotten far enough to determine where Mr. Rile is going
22 with this question. He got to the point of asking about
23 whether something was making a determination about public
24 participation. I didn't hear a question.

25 MR. GUILD: That is also a problem, Mr. Chairman.

mm5

1 MR. JOHNSON: I think he ought to be allowed to
2 state his question and finish -- maybe he is going to ask
3 some kind of relevant question. I don't think we know yet.

4 JUDGE MARGULIES: Will you complete your question.

5 MR. RILEY: Yes, sir.

6 BY MR. RILEY:

7 Q Has the matter of drills for the potentially
8 involved public been considered in the North Carolina Plan,
9 Mr. Harris?

10 MR. CARR: Objection for the reasons stated,
11 your Honor. Contrary to the regulations.

12 MR. GUILD: We think it is a proper question,
13 Mr. Chairman. It goes to whether or not you can effectively
14 evaluate Applicant's own testimony as to the significance
15 of exercises that have been conducted as demonstrating the
16 effectiveness of the plan and implementation, as in
17 Contention 8.

18 (Board conferring)

19 JUDGE MARGULIES: Mr. Riley, we are not interested
20 in the particular adequacy of the drills, but it would be
21 relevant to find out if drills were used to sharpen up and
22 to make more effective the expected coordination among
23 the various groups.

24 BY MR. RILEY:

25 Q Mr. Harris, were drills used in North Carolina to

mm6

1 sharpen up the effectiveness of emergency response
2 procedures?

3 A (Witness Harris) Yes.

4 Q Would you please tell us about it.

5 A Well, we have had a number of different drills in
6 the state --

7 Q Excuse me just a moment, Mr. Harris. The question
8 involves drills in which the public were also involved.

9 A We have had a number of different drills in the
10 state that involve members of the public. We conducted one
11 at McGuire Nuclear Station, we conducted one in Brunswick
12 Nuclear Station, and we conducted one at Catawba.

13 It didn't involve 100 percent participation of
14 all members of the public, but it did involve members of the
15 public.

16 Q Would you tell us what percentages of the public
17 were involved in the three drills?

18 Do you think it is basically a percentage of the
19 people who would have been exposed for the scenario that was
20 used?

21 A I'm sorry, I can't recall that kind of detail
22 Mr. Riley.

23 The first one I remember that involved members of
24 the public was at the Brunswick Nuclear Plant and it involved
25 oh, 3- or 400 participants, members of the public.

mm7

1 McGuire Station I don't remember what the figure
2 was in the exercise, of the members of the public was in
3 the initial McGuire exercise. I don't recall the numbers
4 of the members of the public that took place in the recent
5 Catawba exercise.

6 Q Mr. Broome, could you help us with the number of
7 people in the McGuire and Catawba exercises?

8 A (Witness Broome) Yes, I can.

9 McGuire exercise for Mecklenburg County consisted
10 of approximately 400 people.

11 The Catawba exercises for Mecklenburg County
12 consisted of somewhere between 60 and 75 people.

13 Q Is that basically one classroom for the high
14 school?

15 A One classroom plus members of the general public.
16 A few of them participated on a voluntary basis with regard
17 to the request for voluntary evacuees.

18 Q Mr. Lunsford, with respect to South Carolina's
19 exercise and drills, can you inform us similarly about
20 participation of the public?

21 A (Witness Lunsford) To the best of my knowledge
22 all the exercises we have we use a small number in each
23 annual exercise, for the H. B. Robinson, V. C. Sommers and
24 Ocone plants. Small number meaning 30 to 40, perhaps.

25 In other exercises we have used other people;

mm8

1 Boy Scouts, members of the Armed Forces. Those were different
2 types of exercises.

3 Q And the number on Catawba was?

4 A None that I know of.

5 Q Zero.

6 Interrogatory 8-42 was, In what phone directories
7 is McGuire emergency information given, and what directories
8 will Catawba information be given? None is in the current
9 Charlotte phonebook.

10 Mr. Lunsford or Mr. McSwain, is there such
11 information in any South Carolina phone directories?
12 Perhaps Mr. Thomas would be more appropriate?

13 A As of today I am aware of no phonebook that
14 contains that information in South Carolina. Insofar as
15 evacuation around the Catawba Nuclear Station, perhaps
16 Mr. Thomas can fill us in.

17 A (Witness Thomas) Phone numbers?

18 Q Explicit information for an emergency.

19 A Not as it relates directly to the nuclear
20 situation.

21 Q Are you aware that under federal guidelines that
22 would be an acceptable approach?

23 A I am not.

24 Q Are you, Mr. Lunsford?

25 A (Witness Lunsford) Yes, that is one of several

mm9

1 approaches.

2 Q One of several. And you, of course, Mr. McSwain
3 are?

4 A (Witness McSwain) Yes, I am.

5 Q Now the same questions for North Carolina phone
6 directories.

7 Mr. Harris?

8 (Witness Harris) I am not aware of any phone
9 directories carrying evacuation information in this state.

10 Q That would be true for you, Mr. Broome?

11 A (Witness Broome) That is correct.

12 Q Mr. Phillips?

13 A (Witness Phillips) Yes, sir.

14 Q Has the matter of using such information been
15 discussed between the North Carolina and South Carolina
16 planners?

17 A (Witness Lunsford) Yes. Our general discussions
18 have been on how to inform the public. We have discussed all
19 of the requirements that I am aware of under NUREG 0654. And
20 I am certain that that one has passed through our discussion.

21 Q And you say that with respect to people who are
22 employed by you, or who have responsibilities in this area --
23 not referring to yourself personally?

24 A I am referring to myself personally.

25 Q Personally. Thank you.

mm10

1 Interrogatory 8-47 inquired in reference to the
2 ten radiation beds that the plan indicates are present in
3 Charlotte Memorial Hospital. What accidental release would
4 most likely result in approximately that number of people
5 requiring such treatment?

6 Has the response to that question been discussed
7 by anybody else in the emergency response area, Mr. Broome?

8 MR. JOHNSON: Excuse me, where is this question?

9 MR. RILEY: It is our interrogatory 8-47.

10 MR. JOHNSON: What document is it in?

11 MR. RILEY: I'm sorry, it is the February 22nd
12 filing by Duke Power Company.

13 WITNESS BROOME: I am sorry, your Honor, I don't
14 have that -- that particular question is not identified in
15 the document that was admitted this morning on Contention 8.

16 MR. RILEY: May I show the question --

17 JUDGE MARGULIES: Yes, you may.

18 MR. CARR: Perhaps I can cut it short, your
19 Honor. We didn't provide an answer to that question. We
20 objected to providing it, and we objected to it on the basis
21 that the adequacy of medical treatment was sought to be raised.
22 It was ruled out by the Licensing Board. We discussed this at
23 some length prior to this in the hearing.

24 We did not provide an answer to the interrogatory.
25 I am going to object to the question being asked now on the

mm11

1 basis that it is beyond the scope of this hearing.

2 JUDGE MARGULIES: Would you read the question in
3 the interrogatory, Mr. Riley?

4 MR. RILEY: Yes, sir.

5 Memorial Hospital has ten radiation beds, in
6 quotes. What accidental release would most likely result
7 in this number of people requiring such treatment.

8 That is the question.

9 The Applicant objected to answering the question.
10 I think its relevance here is that it is part and parcel of
11 planning between states and communities to know what the
12 capabilities are vis-a-vis possible accidents.

13 (Board conferring)

14 JUDGE MARGULIES: Mr. Riley, we believe that if
15 you would ask the question in terms of whether different
16 groups discussed the matter as to how they would commit the
17 available resources, it would be the basis for a proper
18 question.

19 BY MR. RILEY:

20 Q This is a question to Mr. Harris and Mr. Lunsford,
21 severally.

22 Was there a discussion of how you would commit
23 medical resources in the event of an emergency requiring
24 such resources?

25 A (Witness Lunsford) I don't recall that specific

mm12

1 discussion, but I believe that is contained in a portion of
2 our plan that covers those general aspects.

3 One annex of our site-specific plan, I can't
4 recall whether it does or it doesn't, but I have it here
5 in my hand -- I am willing to look at it.

6 Q Would you care to.

7 While Mr. Lunsford is looking, Mr. Harris, would
8 you please reply?

9 A (Witness Harris) Pardon?

10 Q While Mr. Lunsford is looking at his material,
11 would you please reply.

12 A I'm not aware of any -- I'm not presently aware
13 of any conversation regarding medical facilities to determine
14 the method of their use.

15 Q And would that be rather between North Carolina
16 and South Carolina, just within North Carolina that there
17 have been no such conversations?

18 A I'm not aware of any conversations. That doesn't
19 mean that one hasn't taken place between some of our planners
20 in South Carolina. But these whole plans were coordinated.
21 You know they had our plans, we had theirs. We passed them
22 back and forth for comments and that type of thing.

23 Q Mr. Broome, are you aware of such conversations?

24 A (Witness Broome) Yes, I am.

25 Q Would you please inform us of them?

mml3t

1 A The conversations were made in reference to the
2 doctor in charge of emergency medicine at Catawba Memorial
3 Hospital, if you are speaking in reference to Memorial
4 Hospital.

5 Q The question is one, the utilization of medical
6 facilities in the event they were required.

7 A I had personal conversation with a representative
8 of Memorial Hospital.

9 Q How many radiation beds does Memorial have?

10 A I think the plan indicates ten. I am not sure.

11 Q Ten?

12 Based on other documents that you have read, does
13 ten represent the upper limit of radiation beds required in
14 severe accident?

15 A Not if we use your hypothesis, it isn't.

16 Q May I say that I am citing the FES. That is not
17 a personal hypothesis.

18 A It is matter that you have reference to, and I
19 am not familiar with.

20 MR. MC GARRY: May I ask, point of information,
21 is that 44,000?

22 MR. RILEY: That would be the 44,000, 270,000
23 exposures of Table 5.1.1, the fatalities referenced in the
24 bottom line of Table 5.1.2 and Appendix F, pages 3 and 4.

25 MR. MC GARRY: Your Honor, with respect thereto

mm14

1 we would object based on the Commission decision, San
2 Onofre, CLI 83-10, 17 NRC 528, where the Commission said:

3 "With respect to individuals who become injured
4 and are also contaminated, the arrangements that are currently
5 required for onsite personnel and emergency workers
6 provide emergency capabilities which should be adequate for
7 treatment of members of the general public. Therefore, no
8 additional medical facilities or capabilities are required
9 for the general public."

10 JUDGE MARGULIES: We are wandering far afield. In
11 approving the line of questioning, the focus was on the
12 coordination of the various groups in discussing utilization,
13 not in terms of how many potential casualties or how many
14 beds can be used, but in terms of some discussions in priority
15 of utilization.

16 WITNESS LUNSFORD: Your Honor, to the best of
17 my knowledge, the answer is no.

18 I have searched through here and found agreements
19 between the State of North Carolina -- from our own records
20 along with South Carolina, pledging support to each other.
21 And, Letters of Agreement with five hospitals that will take
22 casualties for people who have been injured, including
23 those that have been radiologically contaminated, plus a
24 list of hospitals that have the potential for doing that.
25 And that list consists of a total of 31 hospitals.

mm15

1 BY MR. RILEY:

2 Q Could you inform us how many are in South
3 Carolina, how many in North Carolina?

4 A (Witness Lunsford) If you give me a moment
5 again, I would be glad to.

6 Q Would you please?

end T12

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1 A The 31 that are listed here are in South Carolina.

2 MR. RILEY: Thank you, that will complete my
3 examination.

4 JUDGE MARGULIES: You may proceed, Mr. Guild.

5 MR. GUILD: Mr. Chairman, do you have the timing on
6 this?

7 JUDGE MARGULIES: So far, two hours and 15 minutes
8 have been utilized of the four hours and 15 minutes that
9 you have.

10 BY MR. GUILD:

11 Q Gentlemen, can we agree that not only NUREG-0654
12 but effective emergency planning generally requires that the
13 plan assign clear and effective primary and support responsi-
14 bilities upon the various actors who are required to implement
15 the plan? Does anybody disagree with that? Mr. Broome, do
16 you want to disagree with that?

17 A (Witness Broome) No, I won't disagree with that.

18 Q And that the absence of such assignments as a
19 clear and and effective primary and support responsibilities
20 would be a planning deficiency that could impune the effective-
21 ness with which that plan could be implemented. Does that
22 follow? Anybody disagree with that?

23 A (Witness Lunsford) Yes, but I have seen it work
24 without that facility that you're talking about. And
25 surprisingly so.

1 Q Why don't you just tell me what you're thinking
2 about, Mr. Lunsford.

3 A I'm talking about the tornado in Marlenberg County.

4 Q Some confusion, some lack of clear and effective
5 assignments of responsibilities?

6 A It certainly could have been better if there were
7 a more effective plan in existence, yes.

8 Q All right. And do you think that maybe the
9 authorities have learned from that experience and they're
10 going to make improvements.

11 A Without a doubt.

12 Q And to the extent that there are deficiencies in
13 the assignment of primary and support responsibilities for
14 the Catawba plan, improving those deficiencies would enhance
15 the plan, assuming that there are such problems.

16 A Yes. As I have told you personally, if there are,
17 we're anxious to hear from them.

18 Q Now, can we also agree that the Catawba plan
19 presents some unique difficulties and problems for you
20 planners and for those who have responsibilities for
21 implementation? I'm not trying to be mysterious about it,
22 but you've got a plant that sits astride a state boundary
23 practically, and in the 10-mile EPZ are involved two different
24 state jurisdictions, obvious federal people involved, in any
25 event, and three counties primarily involved, and that presents
unique problems, does it not? Anybody disagree with that?

1 A (Witness Broome) I don't know that I agree with
2 the fact that it's a unique problem. It just requires that
3 there's coordination; not necessarily unique.

4 A (Witness Lunsford) It presented us with situations
5 that we had not been confronted with before.

6 Q Well, let's start from that point. Mr. Lunsford,
7 in South Carolina we've got a number of fixed nuclear
8 facilities, and is it fair to say that Catawba is unique
9 because of its proximity to North Carolina and the coordination
10 required in the planning as compared to those other facilities?

11 A Yes. In that the 10-mile EPZ falls in both states.

12 Q All right. You've got a situation where there's
13 a 50-mile ingestion pathway planning zone that goes outside of
14 South Carolina. But in terms of the real guts of an emergency
15 response plan it's the significance that the 10-mile EPZ
16 spills over into North Carolina, and from North Carolina's
17 standpoint the other way around, that makes coordination an
18 added requirement for the Catawba plan?

19 A Yes. We're dealing with people in North Carolina
20 whom we wouldn't customarily deal with if the EPZ weren't in
21 North Carolina.

22 Q And, Mr. Broome, Mr. Harris, do you have any
23 problem with that generally, from your point of view?
24 Additional responsibilities to provide the coordination because
25 of the impact on South Carolina as well as on North Carolina,
right?

1 A (Witness Broome) I don't have any problem at all
2 working with South Carolina. They're good people.

3 A (Witness Harris) It doesn't create that much of a
4 unique situation for North Carolina because the Brunswick
5 nuclear plant sits almost on the ocean and we have to coordinate
6 with the U.S. Coast Guard, much the same way we coordinate
7 with South Carolina.

8 Q Okay, that's a helpful piece of information. But
9 this is the first time you've had this kind of coordination
10 responsibilities with South Carolina for a fix nuclear
11 facility, right?

12 A Yes.

13 Q Now, in your testimony, Mr. Lunsford, in South
14 Carolina you make the observation -- or a lawyer asked the
15 question, I guess, at page 2, beginning at line 7 with
16 respect to those who are assigned responsibilities under
17 the plan, "Question: Do you think these agencies and organiza-
18 tions understand what they will be called upon to do in an
19 emergency?" And your answer there is yes.

20 And I take it you, Mr. Lunsford, and you,
21 Mr. McSwain, affirm that answer and believe that, right?

22 A (Witness McSwain) That's right.

23 A (Witness Lunsford) I affirm that answer to the
24 extent that in my observation and what I have been told and
25 read about situations convening exercises in South Carolina,
yes.

1 Q Okay. Mr. McSwain, you affirm that answer?

2 A (Witness McSwain) I would agree with Mr. Lunsford.

3 Q Okay, and based on what you've heard and read?

4 A And seen.

5 Q If you could keep your voice up, the air conditioning
6 is sort of drowning you out.

7 And the following question, line 11, "Do they
8 understand who is in charge?" And it seems rather a degree
9 of emphasis; you both say, "No doubt about it." Do you both
10 affirm that answer?

11 A (Witness Lunsford) Those words are mine, and I
12 affirm it because I said it.

13 Q I'm going to give you a chance to get out of it,
14 Mr. McSwain.

15 A (Witness Lunsford) From what I have observed, yes.
16 The people I work with know who's in charge. We're not
17 blessed with milk toast leadership.

18 Q Right. How about you, Mr. McSwain?

19 A (Witness McSwain) Yes, I will agree with that.

20 Q Not your words but you agree with it, okay. No
21 doubt about it but they understand who's in charge. Well, I
22 want to tell you I had a hard time figuring it out, so I want
23 you to help clarify it for me if you would, because I've got
24 some doubts about it.

25 Let's look at the South Carolina plan, the South

1 Carolina Operational Radiological Emergency Response Plan,
2 the SCORERP, and I'm looking at page 55. I never could figure
3 out how you cite the sections of this plan, so if you can
4 find it that way I'll just avoid confusing myself any further.

5 Table 3, RER responsibilities, summary table to
6 SCORERP. Do you have that?

7 A (Witness McSwain) Yes, we do.

8 Q Is that the sort of tabular representation of
9 who has primary and support responsibilities; who is in
10 charge, if you will, under the South Carolina plan?

11 A I think it's reasonable to assume that, yes.

12 Q If I'm missing something and it's someplace else,
13 you tell me. That's the way I read this. Is that what it is?

14 A You said it's a tabular form of expressing --

15 Q Who is in charge.

16 A Yes.

17 Q I'm looking at the column on the left, Function,
18 the name of the agency in the middle, and to the right a heading
19 that says Responsibility with a column for Primary and a
20 column for Support. And under each of the functions there's
21 an X by the agency or office or person with primary responsi-
22 bility, and X's by the others who have support responsibility
23 for that function. Correct?

24 A That's correct.

25 Q Now is there anything that's not accurate about

1 this? Has anything been updated, corrected, amended or
2 changed on this table here that I should know about before I
3 make some presumptions about this, telling me who's in charge?

4 A Not to my knowledge.

5 Q Mr. Lunsford?

6 A (Witness Lunsford) This is the plan under which we
7 are currently operating.

8 Q Okay, good. Let's start at the top. First on the
9 list is the function of command and control, and Mr. Lunsford,
10 why don't you tell me what is command and control?

11 A That is where recommendations are received,
12 considered, decisions made, and the control of the actions
13 resulting from those decisions takes place.

14 Q Now that sounded like a paraphrase. Is that
15 term defined in the plan someplace?

16 A It may be, but that came out of my heart and mind
17 at that moment.

18 Q I could tell. But is there a place in the plan
19 where it's defined just so that we'll have some precision
20 attached to your paraphrase --

21 A I'd imagine that it's in the early part of the plan.

22 Q Can we find that just so we won't be operating --
23 I won't be operating under a mistaken assumption of what it
24 means. Is there a definitions section?

25 A No, I don't think there's a definition section.

1 I'm searching through here trying to find some kind of --

2 Q I didn't see one. I'm not trying to trick you; I
3 just don't know either.

4 Okay. Does the function of command and control --
5 do I understand it correctly to reflect who's in charge of all
6 those who have various charges? In other words, sort of the
7 supreme command responsibilities under the plan? Is that the
8 way I should fairly read command and control?

9 A Yes.

10 Q And who has the primary responsibility for that
11 supreme command function under the South Carolina plan?

12 A The supreme commander in South Carolina is always
13 the Governor.

14 Q Okay. What does the plan at Table 3 say about that?
15 Who is primary responsibility assigned to in that table?

16 A Well, in that case, it's -- and you'll notice the
17 order of the listing here -- the Office of the Governor,
18 Emergency Preparedness Division, Office of the Adjutant
19 General, Department of Health and Environmental Controls.

20 Q Well, who has primary responsibility?

21 A The Office of the Governor.

22 Q Well, how many people work in the Office of the
23 Governor, Mr. Lunsford? Do you have a round number? I'm
24 not really looking for a precise answer there.

25 A No, I don't know.

- 1 Q Would you accept 350,400, something like that?
- 2 A No, I don't know. I would say that --
- 3 Q Mr. McSwain, do you know, before we leave that point?
- 4 A (Witness McSwain) No, I don't know.
- 5 Q Would you accept that subject to check? In the
- 6 hundreds? Three or four hundred, five hundred?
- 7 A No, I couldn't accept that.
- 8 Q It's not the Governor and a secretary; there are
- 9 a lot of people out there, aren't there?
- 10 A I don't know.
- 11 Q You just don't know.
- 12 A I don't know how many work in his office.
- 13 Q You know, I sort of look at words and try to under-
- 14 stand what they mean, and when it says "command and control
- 15 primary responsibility," and it doesn't say Governor, it says
- 16 "Office of the Governor," it makes me think that that's not an
- 17 accident that it says that. And what I want to understand is
- 18 it's not an office as a physical location; it's not the
- 19 title Governor -- because you'd say Governor if you meant
- 20 Governor -- it sounds like it means it's some number of people
- 21 in that office. Is that the way I should read it?
- 22 A (Witness Lunsford) No. I have no problem with that.
- 23 You obviously do. The Director of the Division of Public
- 24 Safety Programs is the man who is the Governor's representative,
- 25 and works as part of the Office of the Governor and is the one

1 with whom our division deals in cases like this.

2 Q Okay. And that's Mr. Sanders at the present time?

3 A That's correct.

4 MR. GUILD: Mr. Sanders, Mr. Chairman, is one of
5 the witnesses who is to appear tomorrow.

6 BY MR. GUILD:

7 Q All right, sir. Now, in the Office of the
8 Governor there's the Governor himself, and that's Richard
9 Riley at the present time in South Carolina, right?

10 A (Witness Lunsford) That's correct.

11 Q And he sort of is always the Commander-in-Chief,
12 or I guess that's the word you use, more or less. He is the
13 supreme commander under the plan.

14 A When he's in the state, yes.

15 Q And who's in charge when he's not in the state?

16 A The Lieutenant Governor.

17 Q And I assume, without going down the list, that
18 there's a law in South Carolina that sets out a specified
19 succession of acting governors below the Lieutenant Governor
20 when the Governor or Lieutenant Governor are disabled or
21 are not in the state; correct?

22 A I believe that's correct, yes.

23 Q Mr. McSwain, does it sound right to you?

24 A (Witness McSwain) Yes.

25 Q Now, can we agree that as part of meeting the NUREG

1 criteria under Criterion -- well, I'm going to call it 2A,
2 I'm not certain that's what it is, but it's the assignment
3 of responsibility organizational control planning standard.
4 You're familiar with that, aren't you, MR. Lunsford?

5 A (Witness Lunsford) I'm familiar with it when I
6 have my 0654 in my hand, and believe it or not, this is the
7 first day that I have ever been without it.

8 Q Well, I'm not going to trick you, but it says here
9 under (b) -- 2(b), "Each plan shall contain (by reference
10 to specific acts, codes or statutes) the legal basis for such
11 authorities." You're familiar generally with that responsi-
12 bility under 0654?

13 A Yes.

14 Q And your plan describes what the legal authorities
15 are for the assignments of responsibilities and authorities
16 under your -- for example, under your Table 3?

17 A I believe in paragraph 1.(b) of the basic portion
18 of the radiological emergency response plan which is on
19 page 1, that authority is listed.

20 Q All right. And I'm looking at that authority, and
21 that authority -- this document is in the record, but that
22 authority includes the South Carolina Comprehensive Disaster
23 Preparedness -- oops! Strike that, please.

24 That authority begins with Act No. 199 of July
25 1979, establishing the Emergency Preparedness Division; does
it not?

1 A Yes, that's correct.

2 Q And can we agree that that authority is codified
3 in South Carolina at Title 25-1-420, and following sections
4 of the South Carolina Code of Laws?

5 A I cannot answer that, I'm sorry. I'm not --

6 Q Mr. McSwain?

7 A (Witness McSwain) I can't answer it either.

8 Q All right, sir. Let me show it to you.

9 (Counsel handing document to panel of witnesses.)

10 Let me show you a Xerox of the provisions. Can we
11 agree that the section numbers in the Code I just quoted to
12 you show a legislative history that says 1979 Act No. 199,
13 July 30, 1979? It's the same law you cite in your
14 authorities?

15 (Pause.)

16 A (Witness Lunsford) Yes, sir.

17 Q And can we agree generally, gentlemen, South
18 Carolina now, that those sections that are the codification
19 of that Act, that you cited as the number one authority in
20 your SCORERP, specify in addition to the establishment of the
21 South Carolina Emergency Preparedness Division, the additional
22 powers and duties of the Governor during declared emergencies
23 under Section 25-1-440? Would you accept that?

24 A I would accept it.

25 Q Mr. McSwain?

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A (Witness McSwain) Yes.

Q Now, can you tell me anywhere in that legal authority that the Director of the Governor's Office of Public Safety Programs, Mr. Sanders by title, is vested with primary or support responsibilities under state law?

end 14

Nations

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1 A (Witness Lunsford) No. I believe the provisions
2 of that covered planning and the operation of the emergency
3 operation center and things of that nature.

4 Q When you say "that" you mean that law?

5 A The one that you just referred to.

6 Q Yes. I am sorry. Go ahead.

7 A There is other authority.

8 Q What is the authority for the responsibilities that
9 you assign under the plan to Mr. Sanders?

10 A The third one that we list there under 1(b)(3),
11 Article IV of the Constitution State of South Carolina provides
12 that the governor has complete responsibility of all
13 activities for the state.

14 Q Where are you looking now?

15 A Page one of what we call SCORERP.

16 Q Right. After quoting Act 199, it specifies that the
17 Governor has those authorities, correct? The same paragraph?

18 MR. MCGARRY: He is talking about number three, Mr.
19 Guild.

20 BY MR. GUILD: (Resuming)

21 Q I am sorry. Under the Constitution of South
22 Carolina, Article IV of the Constitution of South Carolina
23 provides that the Governor has complete responsibility of all
24 activities of the state.

25 A (Witness Lunsford) Yes. One could subsume in there

1 that the Governor has the authority to delegate also certain
2 portions of his authorities since he is only one human being
3 and would not be able to control everything. It is my
4 opinion that that is where the Director of the Division of
5 Public Safety Programs might derive his authority by his
6 delegation from the Governor.

7 Q So your testimony is that Mr. Sanders' authority under
8 the plan derives from that constitutional provision through
9 delegation from the Governor?

10 A My testimony is what Mr. Sanders does is approved
11 by the Governor.

12 Q Mr. McSwain, do you agree with that?

13 A (Witness McSwain) Yes.

14 Q Do you have anything to add?

15 A Nothing to add.

16 Q All right, sir. Now Mr. Thomas, is that consistent
17 with your understanding? Please chime in if you hear anything
18 that you want to add or you want to correct?

19 A (Witness Thomas) That is consistent with my
20 understanding of the way the situation is set up.

21 Q So back now to table three at page 55 of SCORERP
22 that Command and Control primary responsibility is assigned
23 to the Office of the Governor, you have in mind the Governor
24 himself and Mr. Sanders who is the director of the Public Safety
25 Programs in the Governor's Office, correct?

1 A (Witness Lunsford) He is the Governor's representa-
2 tive in our eyes.

3 Q Anybody else within the Governor's Office included
4 within the assignment of primary responsibility for the
5 command and control function under the plan?

6 A No one that I know of in the Governor's Office.

7 Q Mr. McSwain, do you know of anybody else?

8 A (Witness McSwain) I know of no one.

9 Q So you have the Governor and Mr. Sanders. Now the
10 same function, the second in line listed under support is
11 Emergency Preparedness Division. Is that separate from the
12 Office of Adjutant General? I understand that you are a part
13 of the Office of the Adjutant General but looking at table
14 three I see an entry for Emergency Preparedness Division
15 and I can't tell whether it is a separate entry for
16 Office of the Adjutant General, is it?

17 A It is my opinion that those are separate entries.
18 The Emergency Preparedness Division is a division of the
19 Office of the Adjutant General.

20 Q The Adjutant General is an elected constitutional
21 officer of the State of South Carolina, is he not?

22 A Yes.

23 Q He is not appointed by the Governor, is he?

24 A No.

25 Q Under the South Carolina Executive Department he

1 has independent constitutional authority from the Governor?

2 He does not answer to the Governor, does he?

3 A I would guess in certain matters that he would
4 answer to the governor.

5 Q Tell me what those are?

6 A I think if the National Guard is called out in the
7 State of South Carolina the Governor is the commander-in-chief
8 of those forces. I think he certainly would answer to him in
9 that circumstance.

10 Q All right. That is helpful. The Adjutant General
11 is the head of the military department and the commander of
12 the National Guard under the commander-in-chief under those
13 circumstances?

14 A Yes.

15 Q But short of the calling out of the National Guard
16 would you agree that the AG is an independent constitutional
17 officer and he doesn't to the Governor?

18 A No. There are other matters that I can think of
19 that he probably would certainly consult with the Governor
20 about.

21 Q I am sure he would but what I want to understand
22 is in terms of assignments of primary and support responsibil-
23 ity and the legal authority that 0654 requires you to show
24 in support of that assignment, I want to understand with
25 as much clarity as possible not the consultative relationship

1 but the primary and support responsibility relationships
2 between Adjutant General and Governor. If I am not stating
3 it correctly that he is an independent constitutional
4 officer and is not answerable to the governor, you stated one
5 exception that you believe is where the National Guard has been
6 called into active service. What others are there?

7 A There is another that I can think of and I certainly
8 don't believe that I being in the position that I am in
9 Emergency Preparedness Division which is considerably lower
10 than Mr. Harris' by the way in the State of North Carolina, I
11 don't know them all. One of them is that there are certain
12 employees who work in the Office of Adjutant General throughout
13 his establishment that are state employees and I would
14 presume that the Governor has some say so about them.

15 Q Who are those with respect to the Catawba plan now,
16 back to this subject? Anybody in particular come to mind that
17 works for the AJ's office who is answerable to the Governor
18 because he is a state employee under the plan?

19 A I would imagine that if there is some calling for
20 state assets that some of these people would be directly
21 involved in the provision of state assets; the planning, the
22 acquiring, the dispatching and the control.

23 Q All right. Who is the Emergency Preparedness
24 Division of the Adjutant General's Office?

25 A That is the division, of course, in which we find

1 ourselves, Mr. McSwain and I. It is presided over by Joshua
2 P. Moore, our director.

3 Q All right. Does Mr. Moore work for the Adjutant
4 General?

5 A He is one of the division heads in the office of
6 the Adjutant General.

7 Q What I want to understand is by way of assignments
8 of responsibility, does Mr. Moore answer with respect to the
9 implementation of the Catawba plan to the Adjutant General?

10 A The implementation of the plan, Mr. Moore operates
11 directly with the representative of the governor's office,
12 Mr. Sanders in the EOC or the FEOC in a consultive status.
13 In addition, present in each case where there is an
14 emergency, the deputy adjutant general is part of that
15 consultive and decision-making process as is the director of
16 the bureau of radiological health.

17 Q Here is what I want to focus on gentleman. Who
18 is in charge? That is the jumping off point. That is your
19 testimony. It is clear who is in charge. I want to know
20 following on that point, who is in charge. With respect to
21 the assignment of primary and support responsibilities
22 you list both emergency preparedness division which is
23 a part of the Office of the Adjutant General and the Office of
24 the Adjutant General and you told me that Mr. Moore who is
25 the director of the division works for the Adjutant General.

1 I want to understand in regard to who is in charge, is it clear
2 that the Adjutant General is in charge?

3 A No.

4 Q Who is in charge?

5 A The governor's representative or the governor.

6 Q We got that far now. That is primary. What as
7 between the emergency preparedness division of the Adjutant
8 General's Office and the Office of the Adjutant General,
9 General Marchant.

10 A General Marchant of course if the Adjutant General.

11 Q He is in charge of the emergency preparedness
12 division?

13 A In certain matters, yes.

14 Q In what matters?

15 A For my pay and the administration of my personal
16 matters.

17 Q Fine. There has been an accident at Catawba. It
18 is the first couple of hours. You have your team of people
19 with executive responsibilities under the plan, assignments
20 of primary and support authority under the command and control
21 function. Is General Marchant in charge or is it Colonel
22 Moore?

23 A When the emergency operation of the center is
24 open and the governor has declared a state of emergency, the
25 governor's representative is in charge of the implementation

1 of this plan in consultation with the director of the
2 emergency preparedness division.

3 Q What about the Adjutant General?

4 A The Adjutant General has a representative usually in
5 the emergency operation center who is the deputy adjutant
6 general, brigadier general Barn.

7 Q What I am trying to drive at is what is the
8 relationship in terms of responsibility between just those two
9 offices, your division, a division of the Adjutant General's
10 office, and the Office of the Adjutant General itself? Who
11 is in charge?

12 A The Adjutant General's Office is represented because
13 the Adjutant General has a lot of the assets that we plan on
14 using and certainly has a vital interest in how one of his
15 divisions functions during one of these emergencies.

16 Q I am still confused but the last item on the list
17 under command and control, the very first function under
18 radiological emergency response responsibility summary table
19 is the Department of Health and Environmental Control. In
20 what respect do they have command and control functions
21 support responsibility?

22 A They are in the consultive process of decision
23 making and provide the first recommendations for the
24 protections of the public.

25 Q I take it that is not Commissioner Jackson who does

15-9

1 but he is the Commissioner of the Department of Health and
2 Environmental Control, right?

3 A This is Mr. Hayward Schierling or some who is his
4 representative, usually Mr. Schierling. I have never seen
5 a case where Mr. Schierling was not involved in this process.

6 Q Who is Mr. Schierling?

7 A He is the head of the Bureau of Radiological Health
8 in the Department of Health and Environmental Control.

9 Q He is an employee of the Commissioner who is Dr.
10 Jackson, correct?

11 A He is an employee of whomever the Commissioner is,
12 yes.

13 Q It is Dr. Jackson as far as I know, right?

14 A Yes.

15 Q What I want to understand is this. Dr. Jackson is
16 the head of the Department of Health and Environmental Control,
17 is he not?

18 A Yes.

19 Q He is the chief executive of that agency. That
20 agency is assigned support responsibility for command and
21 control under the plan. Doesn't Mr. Schierling answer to
22 Dr. Jackson?

23 A Yes. But as director of the Department of Health
24 and Environment Control since that is a state agency, he
25 answers to a certain extent to the governor. This is a state

15-10

1 effort.

2 Q You understand don't you, Mr. Lunsford and Mr.
3 McSwain, that in South Carolina we don't have a cabinet
4 form of government. The governor doesn't appoint Dr. Jackson.
5 He is hired and fired by an independent board or commission
6 that is elected primarily by the General Assembly and in part
7 by gubernatorial appointment but the point is Dr. Jackson and
8 any of these department heads, they are not answerable to the
9 governor in the sense that he appoints them as is in the
10 federal system and maybe as in North Carolina? We don't have
11 a cabinet system of government in the executive branch in
12 South Carolina, do we?

13 A No.

14 Q The Commissioner of the Department of Health and
15 Environmental Control is elected by the Board of the
16 Department of Health and Environmental Control and they are
17 largely appointees of the General Assembly, are they not?
18 Do you accept that?

19 A I would concede that you are correct. I would
20 presume that is true.

21 MR. WILSON: Your Honor, I am afraid that I am going
22 to have to interject at this point. Unfortunately the point
23 that just came out from Mr. Lunsford about the members of the
24 board of health and environmental control in the state is
25 inaccurate. They are appointed by the governor for what that

1 is worth. They hired Dr. Jackson in turn. Mr. Schierling is
2 an employee of the state of South Carolina just as I am.

3 MR. GUILD: I appreciate Mr. Wilson's help. He
4 was employed by them so it is helpful to clarify.

5 The governor does not appoint the Commissioner of
6 the Department of Health and Environmental Control. Is that
7 correct?

8 MR. WILSON: Let's not get too far along here. I
9 wasn't actually employed by DHEC. I have been employed
10 consistently by the Attorney General and was assigned for a
11 time to represent DHEC among other agencies.

12 BY MR. GUILD: (Resuming)

13 Q With that, the commissioner is hired by an
14 independent board or commission and that is the Board of
15 Health and Environmental Control. Is that right, Mr. Lunsford?

16 A (Witness Lunsford) Yes, I presume so.

17 Q What I want to understand is when you assign
18 responsibility to that department, isn't that responsibility
19 born by the commission of that department as Dr. Jackson.

20 A You are getting far beyond my competence to answer
21 these questions. I will have to tell you that. I would
22 presume. I don't know.

23 Q You deal with Mr. Schierling and he is the director
24 of the bureau of radiological health, correct?

25 A That's correct.

1 Q Can we accept that he is a manager of one of the
2 bureaus or divisions or departments of the Department of
3 Health and Environmental Control?

4 A Yes.

5 Q He is not the boss? He is not the commissioner,
6 right?

7 A Correct.

8 Q So he answers to somebody else in the department,
9 right?

10 A Yes.

11 Q Now what I want to understand is with respect to
12 the implementation of the Catawba emergency plan, how does
13 Mr. Schierling go about answering to his boss with respect
14 to his duties that you assign him under this plan?

15 A I can only say that I am sitting here looking at a
16 letter of agreement between Mr. Schierling and the director of
17 my division signed in 1981 and to say that Mr. Schierling
18 and his people including those in the department of Health
19 and Environmental Control have had an opportunity to review
20 this plan more than once and have concurred and made
21 recommendations for changes in it and never once have they
22 said we are having problems with authority or who is in charge.

23 Q I appreciate that and that is helpful but for
24 the contentions that have been filed in this case nobody
25 would have had any problems with this plan at least among the

15-13

1 state officials involved in it, would they?

2 A You are going to have to ask Mr. Schierling about
3 his relationship with his boss because I can't testify to that.

4 Q That is helpful and I appreciate your candor.
5 My concern though is you assigned responsibility to the
6 Department and you presumed that that responsibility is
7 carried out by a person who is not in fact in charge of that
8 department.

9 A We have evidence in exercises that their people
10 show up and participate with us gladly.

11 Q What I want to know is this, let's just suppose
12 that there actually is an accident. It is not an exercise.
13 It really happens and there is a whole lot more at stake
14 than whether you get a passing grade on the exercise. There
15 are actual lives and health and property at stake and the
16 commissioner, Dr. Jackson, is there and Hayward Schierling
17 gets the phone call or his people get the phone call and they
18 say that there is projected release in excess of protected
19 action guide heading towards the town of York, South Carolina,
20 what are we going to do. Mr. Schierling who is a loyal
21 employee of the Department of Health among other things,
22 a good public servant, calls Dr. Jackson because Dr. Jackson
23 sure wants to know about this since he is the commissioner
24 of DHEC and there is something in his department's responsibil-
25 ity that is happening right now and Dr. Jackson who perhaps

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1 hasn't been as intimately involved in planning for this matter
2 as Mr. Schierling has because he has sort of been dealing
3 directly with Mr. Schierling all along; decides suddenly that
4 he wants to be sitting at the head of the table when the
5 channel 10 news comes into DHEC and they ask what is going
6 on and starts calling shots and making decisions.

7 My supposition and my question to you, Mr. Lunsford,
8 is in terms of state law and the assignment of authority
9 within DHEC, Dr. Jackson is the boss and I hope he wouldn't
10 do this but according to his authority he has the authority
11 to tell Mr. Schierling who may know a lot more about the
12 matter and whom you may deal with, he has the authority to
13 tell Mr. Schierling what to do, doesn't he?

14 MR. WILSON: I am not sure, Your Honor, but maybe
15 this is getting even deeper into the legal opinions that are
16 being sought from these witnesses. I am not sure as Mr.
17 Lunsford said earlier that he is really an individual who
18 can answer these questions.

19 MR. GUILD: I think Mr. Lunsford ought to answer it
20 or not answer it but not to have his lawyer suggesting whether
21 he is capable of answering. If he has an objection, fine.

22 MR. WILSON: I would like to finish my comments
23 before I am interrupted.

24 MR. GUILD: No, sir. If he has an objection he
25 should state it.

1 MR. WILSON: That is what I am trying to do, Mr.
2 Guild. The point is that if there is a legal opinion that
3 is being sought from these particular witnesses, it cannot be
4 given. The man is not a lawyer. He is not in a position to
5 talk about legal authorities in a fictitious setting as we are
6 dealing with here as far as the governor and the commissioner
7 of health and the chief of the bureau of radiological health.
8 These are legal opinions that are being sought and they are
9 simply beyond the scope of this witness' expertise or his
10 testimony.

11 MR. GUILD: Mr. Chairman, I submit that they are
12 not and I am glad that Mr. Wilson got to his objection. The
13 fact of the matter is that the plan standard requires
14 not only for clear primary and support responsibilities to
15 be assigned under the plan, but that the legal authority
16 for the assignment of such responsibility be clearly set
17 forth.

18 I appreciate the witness' candor and I think he
19 is fully capable of telling me when he doesn't know an answer
20 or when it calls for something beyond his expertise and he
21 should state it. The fact of the matter is, you can't hide
22 behind the objection that it is a legal opinion called for
23 when what we are talking about is a planning standard that
24 itself specifically and explicitly requires that the legal
25 authority for the assignment of responsibility be clearly set

1 forth. That is the guts of our contention, Mr. Chairman,
2 that there is a confusing array of consultative and
3 delegative authority and that in actuality the house will
4 fall apart.

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1 MR. JOHNSON: Just for the record there is an
2 evaluation criteria under Planning Standard 2A, Assignment
3 of Responsibility that does address this point. It is not
4 part of the Planning Standard as such. It is 2B. It says:
5 "Each plan shall contain by reference to specific acts, codes
6 and statutes, the legal basis for such a course."

7 MR. GUILD: I'm sorry. I appreciate the help, but
8 it is in fact an evaluation criteria, and that is what I meant
9 to indicate. I am looking at it here. I submit the question
10 is proper and the witness does know the answer, and the
11 record should so reflect.

12 JUDGE MARGULIES: Mr. Lunsford, if he asks you
13 any questions that is not to your knowledge, you should
14 so state.

15 WITNESS LUNSFORD: Yes, sir, as I have done before.

16 Mr. Guild, you and I know each other well enough
17 to know that I do not hide behind any objection, and I will
18 tell you what is in my heart and what is on my mind.

19 MR. GUILD: I appreciate that, Mr. Lunsford, and
20 that is an accurate reflection.

21 WITNESS LUNSFORD: The legal authority between
22 Mr. Sheely and his boss for the parameters of the authority,
23 the Director, or whatever his title is in the Department of
24 Health and Environmental Control -- I am not certain, but I
25 would not like to comment on what his authority is.

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BY MR. GUILD:

Q All right, sir. That is helpful.

Now, if we can, the Table 3 that is tabular representation of the assignments of primary and support responsibility, is backed up by a narrative description of the responsibilities for each of these agencies in the plan, correct?

Mr. Lunsford? Mr. McSwain?

A (Witness McSwain) Bear with us one second.

JUDGE MARGULIES: I can give you a cite. It is page 11 where I am looking, correct?

WITNESS LUNSFORD: Yes.

BY MR. GUILD:

Q Page 11 and following, under the heading, Tasks, sets forth the detail of assigned functions for the various agencies that is reflected in your Table 3, correct?

A (Witness Lunsford) Yes, there are functions there.

Q On Page 11, under B, the first item is Office of the Governor, do you see that?

A Yes.

Q Now do you see the last item there, Item 8, Order evacuation if required?

A Yes.

Q Now, show me if you will -- well, first of all,

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1 you understand by that the plan reflects that it is the
2 Governor's task to order an evacuation if required, that's
3 what that means, right?

4 A That's one of the Governor's tasks. Not saying
5 that other people can't do that.

6 Q Well it is a task that is assigned to the Office
7 of the Governor by the terms of page 11, correct?

8 A Yes, in the State Plan.

9 Q Okay.

10 Now when you used the term Office of the Governor
11 earlier, you said that that office included not just the
12 Governor, Richard W. Riley, but in your view with respect
13 to the Catawba Plan, Mr. Sanders, the Director of the Office
14 of Safety Program, right?

15 A Yes, sir.

16 Q You don't mean to suggest that Mr. Sanders has
17 the responsibility and/or authority to order an evacuation
18 if required, do you?

19 A In usual circumstances, Mr. Sanders would consult
20 with the Governor.

21 Q Okay.

22 A Or, the Governor's office, per se. Meaning that
23 person in the Governor's office where the Governor is
24 physically located, or his presence.

25 But, I dare say that Mr. Sanders on certain

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1 occasions could have the authority to order an evacuation.

2 Q You do?

3 A I believe that he has been delegated that
4 authority if the circumstances demand it.

5 Q That's an interesting point and one I want to
6 explore some.

7 What is the source of his authority -- the
8 authority for that power? Does Mr. Sanders have the power
9 to order an evacuation?

10 A I believe that comes along with the assumption of
11 his office as Director of Public Safety Programs. Not only
12 under circumstance of evacuation of areas within the ten-
13 mile EPZ, but in other circumstances wherein an emergency
14 has been declared.

15 Q Okay. Now cite to me on page 1 and following of
16 your plan -- and that is the authority section -- what is
17 the authority that vests in Mr. Sanders, or the person that
18 holds his title, his responsibility?

19 A I can't do that. It may be in a Memorandum of
20 Understanding between himself and the Governor, and may be
21 written into his job description to which I am not privy.

22 Q Mr. McSwain, are you aware of the basis for that
23 authority?

24 A (Witness McSwain) No, I am not.

25 Q Now, in Section 25-1-440 of the Code of Laws of

1 South Carolina -- and again that is part of the same Act 199
2 of 1979 that you reference as the first item in your
3 authority table, there is Item A7, and I quote -- well, A:

4 "The Governor, when an emergency has been
5 declared, as the elected Chief Executive of the State shall
6 be responsible for the safety, security and welfare of the
7 State and shall be empowered with the following additional
8 authority to adequately discharge this responsibility.

9 "Item 7. Direct and compel evacuation of all
10 or part of the populace from any stricken or threatened
11 area if this action is deemed necessary for the preservation
12 of life or other emergency mitigation, response or recovery,
13 et cetera."

14 Now that is the legal authority for the Governor
15 having the power to direct and compel evacuation, correct?

16 A (Witness Lunsford) Yes.

17 You asked me about the last item, which was to
18 order an evacuation.

19 Q Right.

20 A In that scheme of things that you were reading
21 from?

22 Q Yes.

23 A Yes. Okay. I answered you.

24 Your question about Mr. Sanders, you were getting
25 to the fact of whether he might have the delegation or have

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1 the authority to order an evacuation.

2 Q Okay.

3 A I said, yes.

4 Q Okay. Now we are back to perhaps where we started
5 at the very beginning of the morning with Mr. Harris, because
6 your plan at page 11 uses the term "order," right?

7 A Yes.

8 Q And the law in South Carolina that I read to you
9 from uses the terms "direct and compel," correct?

10 A Yes.

11 Q Now tell me, first of all, where in the plan those
12 terms "order," "direct," and "compel" are defined?

13 A I don't know that they are defined.

14 Q Is anyone aware of the definitions of those terms
15 to be included in the plan?

16 Mr. McSwain?

17 A (Witness McSwain) Not to my knowledge.

18 Q Just to save us some time -- Mr. Harris, we will
19 get to you -- but in the North Carolina Plan, are the terms
20 "order," "direct" or "compel" defined?

21 A (Witness Harris) No, not to my knowledge.

22 Q All right, sir.

23 Now back to you, Mr. Lunsford. How do you then
24 understand those terms?

25 A (Witness Lunsford) I understand "direct" and

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1 "order" as synonyms.

2 Q Mean the same thing, right?

3 A Essentially the same thing. "Compel" being a
4 term which is stronger. And I maintain that the chief
5 elected official in York County has the authority to order
6 an evacuation.

7 Q Okay.

8 A When there is no declaration of emergency by the
9 Governor.

10 Q And what is the authority -- first of all, show
11 me on page 1 of your State Plan where the authority, legal
12 authority cited reflects that power on the part, for example,
13 on the chief elected official of York County?

14 A It is in the County Plan, I believe.

15 Q Well, this is your State Plan. Mr. Thomas, you are
16 shaking your head, have you got a reference?

17 A (Witness Thomas) They used the term Chief Elected.
18 It is really Chief Administrative Officer.

19 Q Who is it by name?

20 A County Manager, Lester Klough.

21 Q As opposed to an elected official who is Chairman
22 of the County Council, Mr. Thomas?

23 A That's correct.

24 Q The bottom line -- let's go back one more step,
25 Mr. Lunsford in your table of authority assigning

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1 responsibilities under your SCORERP here, is there an
2 authority cited there as the basis for your assertion that
3 the Chief Administrative, or Elected Official of York County,
4 for example, has the power to order an evacuation?

5 A Not in this plan.

6 Q Mr. Thomas, what is the basis for your -- if you
7 do agree -- your view that Mr. Klough, the Chief Administrative
8 Officer of your county has that power to order an evacuation?

9 A Using the term "order" and not "compel?"

10 Q If you want to adopt Mr. Lunsford's -- do you
11 agree with Mr. Lunsford's use of the term?

12 A If I understood it correctly, yes, I think I do.

13 Q Why don't you tell me, use your own definition.

14 I am not trying to put words in your mouth. I want to under-
15 stand what you mean by it.

16 A The word "compel" as it is used, as relates to
17 evacuation, law enforcement officials, military personnel
18 could forcibly remove someone from their premises if there
19 is a compulsion to move issued only by the Governor and his
20 designee.

21 If they are talking about ordering an evacuation,
22 or directing an order to evacuate, that is more of an
23 advisory situation where our personnel would not be forcibly,
24 or even considering, forcibly removing legally or otherwise.

25 So, if York County after evaluating the situation

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1 and consulting with those persons that we normally consult
2 with, decided that an evacuation is proper and we were in
3 charge at that time, then the person ultimately taking
4 responsibility to say "Let's evacuate such and such a zone,"
5 would be our County Manager. There is a County ordinance
6 which adopts setting up and establishing procedures and
7 objectives of the Municipal County Preparedness Agency that
8 delegates that type of authority. Not necessarily specifically,
9 but generally.

10 Q Okay. So your view is the source of his
11 authority would be a County ordinance, right?

12 A A County ordinance in home rule is a direction
13 for his responsibility as the Chief Administrative Officer.

14 Q And you do 't have any problem with the notion
15 that County ordinances -- the validity of the County ordinance
16 is determined by State law in the State Constitution. You
17 can't have a County Ordinance that gives someone more power
18 or tells someone that they have the right to do something
19 that they are not charged with doing under State law, State
20 constitution?

21 A We recognize the County is a creature of the
22 State. And the Governor is Chief Executive Officer.

23 Q All right.

24 Now I am looking at Annex -- I guess you call
25 these Annexes -- Annex C to the South Carolina Plan.

mml01 SCORERP, and that is a public information center. These
2 are sample messages, gentlemen, Mr. Lunsford, Mr. McSwain,
3 Mr. Thomas.

4 At C17 we have Protective Action, Evacuation.
5 And here is what the sample message says: "Those persons
6 living in the affected are are --" and then there are three
7 alternate parentheticals -- "advised, requested, ordered by
8 the Governor to proceed with an orderly evacuation over
9 the nearest route to the reception center located at. . ."
10 at cetera.

11 What is the significance of the use of the terms,
12 "advised, requested and ordered" in that sample EBS message?

13 MR. JOHNSON: I am sorry, I was looking at C5.

14 MR. GUILD: C17.

15 MR. JOHNSON: C17.

16 BY MR. GUILD:

17 Q Mr. Lunsford?

18 A (Witness Lunsford) I believe that has to do with
19 the immediacy of whatever problem there is.

20 Q Okay.

21 Is it related all to the ultimate definitions of
22 the terms direct, compel and order?

23 A No, I don't think it is directly related to that.

24 Q Okay, because we have got direct, compel, order,
25 advise and request now. All as terms of art that appear to

mm11

1 be used in various parts of your plan with respect to the
2 authority of the Governor and various other persons who have
3 responsibility for evacuation.

4 I want to understand what those terms mean.

5 A In the context of being used here, they are
6 being put out to the public. And I would imagine the people
7 that wrote these messages thought that these were the best
8 words that could be used, that would be best understood by
9 the public.

10 Q Okay.

11 Well, can we agree that they sort of are -- they
12 are ranked in order of urgency, shall we say -- advised,
13 requested and ordered in that ascending order of urgency? Is
14 that a fair reading?

15 A That would be the way that I would read it, yes.

16 Q Ordering being the most mandatory or the most
17 urgent of the three?

18 A Yes.

19 Q Is ordered to be interpreted by the member of
20 the general public in that message as a mandatory requirement;
21 the Governor has ordered an evacuation?

22 A Yes.

23 Q Do you agree with that, Mr. McSwain?

24 A (Witness McSwain) Yes, I think it can be
25 expounded upon during the broadcast, also.

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1 Q All right. I am sure, you know, it is like
2 angels on the head of a pin. If you had 25 lawyers, you
3 could probably write, you know, hundreds of words about
4 what "ordered" means. You could expound on it.

5 What I want to know is the intent of the planners
6 that that message be perceived by the reader, the public,
7 as a mandatory direction from the Governor to evacuate,
8 ordered?

9 A (Witness Lunsford) It would be my judgment that
10 it would be considered as an order.

11 Q Do you agree with that, Mr. McSwain?

12 A (Witness McSwain) Yes.

13 Q In military parlance, an order is a clear term.
14 It means you have got to do it, right, and we should under-
15 stand it that way?

16 A (Witness Lunsford) It would be well advised to
17 follow the order, yes.

18 Q Okay.

19 Now, is it fair also to understand -- Mr. Thomas,
20 do you agree with that, sir?

21 A (Witness Thomas) In part.

22 If we were having a narrative discussion about
23 what statement the Governor had made, and we were told by
24 the State authorities that an order had been issued, we
25 would try to encourage them to use the word "compel" to us

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1 to tell our law enforcement people forcibly to move someone.

2 Q Okay. Do you see that in one of the EBS messages
3 in the plan? That is a term you would prefer, but is the
4 word "compel" included in any of the EBS messages with
5 respect to evacuation?

6 A I'm speaking personally. I am not sure that has
7 any relevance to the general public at that point.

8 Q It may or may not. But what I am asking you,
9 Mr. Thomas, is the word "compel" one of the things that York
10 uses as a message?

11 A I don't know.

12 Q Please tell me -- you don't have to check now --
13 if it is in there I would be interested in knowing that.
14 Maybe you can give me a reference at a later point. I
15 would appreciate it.

16 JUDGE MARGULIES: Mr. Guild, at this time you have
17 35 minutes. It might be appropriate to take a recess.

18 Let's take a 25 minute recess.

19 (Recess)
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end T16

1 JUDGE MARGULIES: Back on the record.

2 BY MR. GUILD: (Resuming)

3 Q Gentlemen, we were speaking in South Carolina about
4 the authority of local officials as contrasted and compared
5 with the governor to direct, order or compel an evacuation
6 under the plan. I believe it is your testimony that in your
7 view there is authority residing in the county officials,
8 in York, it is Mr. Klugh the county manager, to direct or
9 order an evacuation if the state folks have not arrived on
10 the scene and taken over responsibility, right?

11 A (Witness Broome) Correct.

12 Q Mr. Lunsford, Mr. McSwain, right?

13 A (Witness Lunsford) Yes.

14 Q Are you gentlemen aware of the opinion of the
15 Attorney General of South Carolina of September 5, 1980
16 and in fact, Mr. McSwain, it is attached to a letter to
17 you from Mr. Ben Thomas of SLED and has been received in
18 evidence as Intervenor's Exhibit number 21 and it is an
19 opinion that states county and municipal governments and
20 officials do not under existing law have the authority to
21 direct and compel an evacuation of all or any part of their
22 populace when faced with a real or threatened emergency
23 or disaster related situation. It goes on to state that only
24 the governor or his regular or interim successor as provided
25 by law has such authority. Are you aware of that?

1 A (Witness McSwain) Yes, I am.

2 A (Witness Lunsford) Would you read the sentence
3 though that says that. I would like to hear it.

4 Q Sure. I will read the whole thing.

5 A Just the sentence that says that only the governor
6 has the authority to do what.

7 Q I read the first part in whole. Now the
8 governor or his regular or interim successor as provided for
9 by law would be authorized upon declaring an emergency to
10 exist to direct and compel an evacuation of all or part of the
11 populace for any stricken or threatened area of the state and
12 to utilize the additional emergency powers granted by law
13 and that opinion primarily cites the statute that I showed
14 you and that is the statute, Act 199, that you relied on
15 for your plan, correct?

16 A I don't have any difficulty with that because
17 the words are direct and compel.

18 Q All right. That is what I thought, Mr. Lunsford.
19 I thought that this attorney general's opinion was the source
20 of the interesting use of semantic distinctions that we have
21 among the terms direct, order and compel. Is this attorney
22 general's opinion the basis for your use of the terms "direct"
23 and "order" when you suggest that the local officials have
24 that power whereas the governor has the power to compel?

25 A Generally yes.

1 Q However an interesting thing is that this attorney
2 general's opinion uses the terms "direct and compel" both
3 with respect to the county officials and the governor. In
4 other words, it characterizes the governor's authority under
5 state law as the authority not to compel but the authority
6 to direct and compel.

7 A In that context you are stating that only the
8 governor can direct an evacuation.

9 Q I thought you told me that directing was merely
10 advisory and that was one of the terms that described the
11 local official's power.

12 A That is why I am asking you. You are saying that,
13 that only the governor can direct an evacuation based on that
14 authority.

15 Q That is what the attorney general opinion states.

16 A I don't interpret that at all that way. I interpret
17 that to mean to direct and compel.

18 Q Let me read the conclusion on page four of the
19 opinion. "It is accordingly the opinion of this office that
20 under existing law neither county nor municipal governing
21 body or official has the authority to direct and compel an
22 evacuation of any of its populace." Here is the important
23 point, "This is not to say, however, that local officials
24 including law enforcement should not continue to warn or
25 encourage evacuation when hazardous or dangerous conditions

1 exist on a local level." Were you aware of the attorney
2 general's office suggesting that the authority that does
3 exist with local, county and municipal people is that to
4 warn and encourage evacuation?

5 A Yes, I have read that.

6 Q Mr. McSwain, the letter was to you. Are you aware
7 of it?

8 A (Witness McSwain) Yes, sir.

9 Q Now we have the terms "warn," "encourage," "direct,"
10 "order" and "compel." And I think then there was "recommend"
11 and "advise" in the EBS message, all with respect to
12 evacuation, right?

13 A (Witness Lunsford) So far, we have covered those,
14 yes.

15 Q It is still your opinion given the attorney general's
16 opinion that I am reading from that local authorities have
17 the power that is greater than simply warning and encouraging
18 and that that power includes the terms "direct and order"
19 an evacuation?

20 A That is my opinion.

21 Q That is what the plan assumes, correct?

22 A Yes. That is the way I interpret the plan, yes.

23 Q Mr. Thomas, that is what your plan assumes, doesn't
24 it?

25 A (Witness Thomas) Yes. We recognize the attorney

1 general's opinion to be just that, an opinion but that
2 coincides with what I was trying to describe earlier as
3 to our opinion of the situation.

4 Q You differ with the attorney general?

5 A From the point of recognizing that as it applies
6 to our situation.

7 Q Yes. Mr. McSwain?

8 A (Witness McSwain) I agree.

9 Q Mr. Thomas was writing you a letter, Mr. McSwain,
10 in the context of what he describes as our problem at
11 Carowinds. It is true, is it not, that your problem at
12 Carowinds was essentially in a nutshell the fact that with
13 all those people up there on a potential peak day, 36,000
14 projected, you knew you were going to have what I think Mr.
15 Kulash described as a monumental headache and you had
16 contemplated the idea of an advisory relocation if you will
17 or evacuation of the Carowinds theme park before you called
18 for a general evacuation order, direction, suggestion or
19 anything else you want to call it, right, before the
20 EBS message went out that said "evacuate," right?

21 A We had been asked that by Carowinds to advise them
22 of the situation. We would, of course, obtain that informa-
23 tion from the station itself.

24 Q The station?

25 A Catawba Nuclear Station. We would get this

1 recommendation from them.

2 Q The letter of January 18, 1983 and it is Intervenor's
3 Exhibit 21, "Dear Bill, I met with assistant attorney general
4 John Wilson in reference to our problem at Carowinds. He
5 advised that I was correct in stating that only the governor
6 in the State of South Carolina could ask for an evacuation.
7 Home rule is in effect in this state, however, it does not
8 give local authority any power as to the question of
9 evacuation."

10 Do you remember Mr. Thomas from SLED telling you
11 that?

12 A I would have to look at it again.

13 Q Would you accept that subject to check? My time is
14 fast running out.

15 A Yes, sir.

16 Q Here is the other interesting observation. The
17 term "evacuation" should be avoided unless an order has been
18 signed by the governor. This is true for any large private
19 employer in York County and that is goes to say that we should
20 put Carowinds management on notice that if they anticipate
21 needing state or local assistance in closing down their
22 operation during an emergency, they should entertain the
23 possibility of doing so during alert. That is essentially a
24 precautionary shutdown, that is what they are referring to?

25 A Yes.

1 Q You were using the term "shut down" as opposed to
2 evacuation to avoid that legal problem that Mr. Thomas was
3 pointing out, that being the limits on the power to the
4 governor in his view to order an evacuation, using shut down
5 as a substitute with respect to Carowinds, right? Mr. McSwain.

6 A I think that was Mr. Thomas' words.

7 Q Exhibit 40, Carowinds PTL planning meeting 1 February
8 1983 about two weeks after your letter from Mr. Thomas,
9 Topics of Discussion in quotes now, "Shutdown versus
10 evacuation." Did you write this agenda, Mr. McSwain?

11 A I don't know. I would have to see it.

12 Q I will show it to you.

13 A (Perusing document.)

14 Q Have you seen that before?

15 A Yes.

16 Q You wrote it?

17 A Yes, I did.

18 Q Shut down was being used as a term by comparison
19 with evacuation, using shut down as a term of art because
20 as Mr. Thomas suggests in his opinion and that of the attorney
21 general the word "evacuation" should be avoided unless on
22 the basis of an order signed by the governor, right?

23 A That could have been the thought at the time.

24 Q Didn't you originally assume that the State of
25 North Carolina and South Carolina emergency response officials

1 would co-locate at the Clover National Guard Armory?

2 A Repeat that one more time.

3 Q Yes. North Carolina and South Carolina people
4 co-locate both together at Clover National Guard Armory,
5 right?

6 A There were North and South Carolina people together
7 at the Clover National Guard Armory during the exercise.

8 Q Wasn't that to be the joint forward emergency
9 operation center or command post or whatever term of art
10 you want to use?

11 A Not to my knowledge.

12 Q Mr. Lunsford.

13 A (Witness Lunsford) I never heard that proposition.

14 Q All right. Anyone from North Carolina?

15 A (Witness Harris) There were some early on
16 discussion about one of our major people being at the South
17 Carolina headquarters and that is, in fact, what occurred. We
18 put one of the assistant directors of the Division of Emergency
19 Management as a liason officer in South Carolina.

20 Q In what regards if at all have the status of the
21 Clover site, the FEOC National Guard Armory, in what regards
22 if at all has it changed with respect to North Carolina
23 operation? Mr. Harris.

24 A I don't follow the question, Mr. Guild.

25 Q Was there an earlier assignment of the North Carolina

17-9

1 people to make command decisions out of Clover National Guard
2 Armory?

3 A No. There were some early discussions. That was
4 just preliminary discussion before any planning was done.
5 The decision was made very early on that we would exchange
6 liason officers. We would operate out of our facility at
7 Charlotte and they would operate out of their facility.

8 Q I somehow picked up on some of those early discus-
9 sions and understood that there was to have been a plan to
10 co-locate the command people from North and South Carolina
11 in a common facility so that they could sit across a table
12 or what have you and not have to rely on radio links or
13 telephone links or what have you. It seemed like a good idea
14 to me so I was trying to understand why the North Carolina
15 people opted to be 10 or 15 miles away at Douglas Airport.
16 Can you tell me why you decided not to co-locate and instead
17 decided to have independent sites?

18 A Well for one thing we had the facility at Charlotte
19 prepared. We had installed permanent antennae there. We
20 are accustomed to operating there. From our standpoint it
21 is a better place for us to coordinate our activities. Since
22 we are going to be trying to coordinate the activities in
23 North Carolina whereas South Carolina is coordinating the
24 activities in South Carolina we seemed to be better located
25 where we are.

1 Q Mr. Lunsford and Mr. McSwain, anything to add to
2 that, to the idea of co-locating your command post with North
3 Carolina as opposed to having separate facilities?

4 A (Witness Lunsford) To my knowledge I never heard
5 that proposition but it is almost physically impossible to do
6 that because of the size of the facility. I don't believe we
7 could take that big a group of people.

8 Q At Clover?

9 A At Clover. We wouldn't want that huge number of
10 people inside one facility.

11 Q Mr. McSwain, anything to add?

12 A (Witness McSwain) No. I agree with Mr. Lunsford.
13 It would just be impossible to do it.

14 Q All right. Now you recall when there was planning
15 being done about evacuation routes and time estimates to get
16 people out those routes. I am looking at a document dated
17 February 2, 1983 and it is a Duke document and it simply makes
18 this observation. In the several weeks since your attention
19 was directed to a potential problem involving the evacuation
20 routes which would in the case of South Carolina residents
21 would not be available -- in other words, no crossing of
22 state boundaries, a restricted traffic flow analysis of a
23 Catawba evacuation has been performed.

24 The reference is made to constraints outlined by
25 the South Carolina Department of Emergency Management, i.e.,

1 evacuees would not be allowed to cross state lines. Do you
2 remember that, Mr. Lunsford?

3 A (Witness Lunsford) South Carolina Office of
4 Emergency Management?

5 Q Yes.

6 A I never heard of that.

7 Q All right. Obviously the office name is wrong but
8 do you know what I am talking about? Do you recall the refer-
9 ence to a constraint placed on the evacuation routes by
10 South Carolina officials to the effect that South Carolina
11 evacuees would be prevented from crossing into North Carolina?

12 A I never heard that they would be prevented. I know
13 that we were trying to make provisions to shelter all of the
14 South Carolina evacuees in South Carolina.

15 Q Mr. McSwain, do you know what I am talking about?

16 A (Witness McSwain) No, sir, I don't.

17 Q Are either of you gentlemen aware of to quote the
18 Duke memo "constraints outlined by the South Carolina
19 people," and if the name of the agency is wrong, they used
20 the Department of Emergency Management, I assume they mean
21 Emergency Planning Division of the Adjutant General's Office,
22 "... (i.e., evacuees would not be allowed to cross states)."
23 Do you know what that means?

24 A (Witness Lunsford) No. I wish I could tell you.
25 In our planning for evacuation we have had open meetings on

17-12

1 that with representatives from every form of law enforcement
2 on both sides of the border. Where there were problems
3 identified by people who had lived in and around the areas
4 where there would be problems, they were corrected and we had
5 nothing but good progress in that direction.

6 Q Let me just put this in some context. What ultimately
7 happened was the PRC/Vorhees people adopted what they called
8 the free-flow model, people getting out from the EPZ as quickly
9 as possible regardless of route, regardless of jurisdictional
10 boundary which called for some South Carolina people going into
11 North Carolina because it was the quickest way out. You
12 understand that, right?

13 A I understand what you are saying. I am not sure
14 of who or how many would do that.

15 Q I am not sure either. But what the document seems
16 to reflect is that there was an earlier constraint that
17 perhaps had to do with your observation that South Carolina
18 evacuees were supposed to go to South Carolina shelters and not
19 to into North Carolina and stay there or go to North Carolina
20 and cross back. That model produced a longer time estimate.
21 There was a meeting and people got together and worked out
22 whatever differences there were. Vorhees did another free-flow
23 study which cut some time off and the result was the free
24 flow model was what was adopted with the routes that were
25 reflected in that.

1 Q What I want to understand is do either of you
2 gentlemen for South Carolina or anybody else on the panel for
3 that matter, can you shed any light on what the constraints
4 were that are referenced in this document?

5 A I can't, no.

6 Q Any other gentlemen?

7 A (Witness Broome) I can recall several meetings with
8 regard to what you are talking about. With regard to
9 constraints, I am not familiar with that. I know that many
10 meetins were held both with North and South Carolina
11 representatives there in addition to law enforcement represen-
12 tatives being present also and evacuation time was looked
13 at.

14 Based on the amount of time, I think, it was going
15 to take for everyone to get out of the EPZ, it was determined
16 that a free flow method which is the final adaptation by
17 the PRC was the best method and we didn't necessarily look
18 at state lines with regard to whether it was a North Carolina
19 resident or a South Carolina resident, the primary factor
20 being get them out of the area as quickly as possible. Other
21 than that, I am not familiar with it.

22 Q Here is a letter dated January 25, 1983 from Mr.
23 Tully with Duke, a memo to Mr. Dial, L. C. Dial. "On January
24 18, 1983 a meeting was held between the states of North and
25 South Carolina, Duke, the counties surrounding the station and

1 Duke's consultants PRC/Vorhees." Skipping down, "... During
2 this meeting the representatives of the South Carolina
3 Department of Emergency Management," and I take that to be the
4 emergency preparedness division, "... stated that evacuees
5 would not be allowed to cross state lines. This creates a
6 situation where neither interstate 77 northbound nor U.S.
7 route 21 northbound would be available to evacuate residents.
8 Although additional meetings will be held on this subject if
9 no resolution is forthcoming, the entire emergency plan could
10 be in jeopardy. Please be aware that this situation exists
11 and that it may be necessary for Duke upper management to
12 approach the states of North and South Carolina concerning
13 the issue of evacuation across state lines. This issue could
14 become critical due to the fact that emergency plans will be
15 litigated as part of the licensing process. Licensing will
16 advise if management assistance is required."

17 Does that shed some light on what the contribution
18 of the South Carolina officials might have been, Mr. Lunsford
19 or Mr. McSwain?

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1 A (Witness Lunsford) I'm not aware of that, nor am I aware of any
2 contact that was made subsequent to that about that matter.

3 The fact of the matter is, the problem was
4 resolved because there has been no difficulty as far as I
5 know, in people I know in the upper northeast part of the
6 EPZ evacuating into North Carolina.

7 Q That is what I am trying to focus on. It has
8 been resolved, at least on paper. We know the paper plan
9 now calls for evacuation routes that use I-77 northbound,
10 for example.

11 What I want to know is what was the original
12 constraint, because I frankly want to know whether that
13 constraint still exists or not, Mr. Lunsford, Mr. McSwain
14 and other gentlemen.

15 And I want to have some kind of handle on
16 whether or not there is a -- there is a real or possible
17 impediment to implementation that flows from a constraint
18 that is reflected in this document.

19 A (Witness Broome) I think the word "constraint" is
20 being misused here within this context. Because I think
21 South Carolina indicated originally in the original planning
22 that took place when we met, South Carolina was wanting to --
23 because they were residents of South Carolina -- to shelter
24 their people.

25 Now, if that was taken out of context and the word

mm2

1 "constraint" was interjected, I think it was done in error.

2 Q There is a note on this document that says, "JRH,
3 John Lee. Mr. Lee was here, was concerned with SC's position
4 and past concern to --" I can't read it "-- that resulted in
5 this letter. SC's position could cause us problems in
6 hearings. It will about double evacuation time.
7 We will keep you advised, RFE 131."

8 None of you gentlemen are aware of what that con-
9 straint was?

10 A No. As I said, and Mr. Broome has mentioned
11 subsequent to my remark about it, we have always wanted to
12 shelter our own people. But I am not saying North Carolina
13 and Mecklenburg County have been very generous in providing.

14 Q Be happy to let you look at it, if that sheds any
15 light on the matter. It is of concern to me.

16 (Document handed to Witness Lunsford)

17 MR. GUILD: Mr. Chairman, I am not really certain
18 of the need to do this, but I want to ask -- to make sure
19 that the statutory references that have been the subject of
20 some of this examination, are available to the Board for the
21 purpose of making findings.

22 They are all referenced in the plan as part of the
23 authority and I want to make a reference in the North
24 Carolina plan, similarly. They are state law and I assume
25 that that state law is something that this Board can observe,

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1 take notice of or what have you.

2 But explicitly I would ask to remove any doubt,
3 explicitly I ask that the Board take Administrative Notice
4 of section 25-1-420 Code of Laws of South Carolina. And
5 that is a codification of Act No. 199 effective July 30th,
6 1979. That is referenced in the South Carolina Plan.

7 And similarly I would ask that the Board take
8 official notice of Chapter 166A of the North Carolina
9 General Statute entitled The North Carolina Emergency
10 Management Act of 1977. And it is Sections 166A-1, et sec,
11 and it also is referenced as authority under the North
12 Carolina Plan.

13 JUDGE MARGULIES: Official notice will be taken
14 as requested.

15 Your time has run out, Mr. Guild.

16 MR. GUILD: May I have about five minutes,
17 Mr. Chairman, and I will finish.

18 JUDGE MARGULIES: Is there any objection?

19 MR. JOHNSON: No objection.

20 JUDGE MARGULIES: All right, sir.

21 BY MR. GUILD:

22 Q Mr. Harris, you heard the discussion of the
23 South Carolina people. Do you employ a similar use of
24 the terms such as "direct," "order," "compel" with respect
25 to evacuation and the authority of the Governor of North

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1 Carolina?

2 A (Witness Harris) Yes.

3 Q And local authority as compared to that authority
4 of the Governor?

5 A The General Statute you mentioned was 166. If
6 you look at that chapter that was just referenced a few
7 minutes ago, you will find the enabling legislation that
8 allows local government to pass orders, giving them the
9 authority to do what they need to do in an emergency.

10 Q All right. Well, I have some problem with that,
11 but you agree that almost using identical language to the
12 South Carolina Statute, that Section 166A-6(c) provides in
13 addition during a state of disaster, with the concurrence
14 of the Council -- and that is the Council of State -- excuse
15 me, with the concurrence of the Council of State, the Governor
16 has the following powers:

17 One, to direct and compel the evacuation of all
18 or part of the population from any stricken or threatened
19 area, et cetera?

20 A Yes.

21 Q Used almost exactly the same language, same
22 words, "direct" and "compel" as in South Carolina, right?

23 A Yes.

24 Q Okay.

25 Now, I am looking at your plan, North Carolina

mm5 1 Plan, Part 1, Figure 4, and it appears at Page 28.

2 We agree that that essentially is the comparable
3 table assigning primary and support responsibilities ,
4 comparable to the table we were looking at with the South
5 Carolina people?

6 A I don't know, I didn't see the South Carolina paper
7 but this is the chart assigning responsibilities, yes.

8 Q Okay.

9 And this is provided for in 0654 as it requires
10 the table be set out showing primary and support responsi-
11 bilities?

12 A No. 0654 to my knowledge, does not require
13 a chart. It requires designation of responsibilities.

14 Q Okay. It will speak for itself.

15 But, looking at page 28 under Command and Control,
16 who is assigned primary responsibility under the North
17 Carolina Plan?

18 A Secretary of the Department of Crime Control and
19 Public Safety.

20 Q All right. Now doesn't your testimony reflect,
21 as does Section 156A-6, that the primary responsibility for
22 command and control is vested in the Governor of the State?

23 A Oh, yes, sir. That is always -- I understood
24 that to be true.

25 Q Where is the Governor shown in your primary

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1 and support responsibility summary table pages 28 and
2 following?

3 A I am sure it just wasn't considered to be
4 necessary. There is no question in North Carolina that the
5 Governor is the Chief Executive Officer.

6 Q It was a question to me. That's why I asked it,
7 because it doesn't appear that the Governor is shown on that
8 table. He is not, is he?

9 A He is not shown on the table.

10 Q All right. But look at page 32. We have Figure 6,
11 State direction, control and coordination.

12 Doesn't it show the Governor at the top of that
13 organizational chart above the Secretary of the Department
14 of Crime Control and Public Safety?

15 A It does.

16 Q Why is the Governor left off the table, then?

17 A I'm sure it just wasn't felt it was necessary.

18 Q An oversight?

19 A I wouldn't say it was an oversight, just
20 probably deemed not to be necessary.

21 Q Okay. Now gentlemen, both of you -- both
22 gentlemen with respect to North and South Carolina, your
23 plan calls for assignment of primary and support responsi-
24 bilities in the words of the plan itself. But, can we
25 agree that establishing that the plan works is a product of

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1 not simply writing the plan, it is a product of having people
2 understand what their responsibilities are under the plan,
3 training them in those responsibilities and exercising those
4 responsibilities to determine if they can be effectively
5 implemented? Isn't that what your testimony reflects,
6 Mr. Harris?

7 A (Witness Harris) Yes.

8 Q Mr. Lunsford?

9 A (Witness Lunsford) Yes.

10 Q I only have a moment left, but isn't it clear that
11 as part of 0654 that you have to demonstrate that you are
12 effectively maintaining the ability to implement through a
13 program of training under the plan? Correct, Mr. Lunsford?

14 A There has to be a program of regular training,
15 yes.

16 Q And in South Carolina, does that not call for
17 initial training and then annual training of those persons
18 with responsibilities under the plan?

19 A I'm not sure of the frequency rate, but I will go
20 along with you in agreeing that it requires training.

21 Q Okay.

22 Mr. Harris, would you agree with that statement?

23 A (Witness Harris) Yes.

24 Q Okay.

25 Now, Mr. Lunsford, for South Carolina Annex B

mm8

1 provides the training, and it says: State and local govern-
2 ment RER personnel -- Radiological Emergency Response -- will
3 be thoroughly briefed on all applicable RER plans, procedures
4 and duties.

5 Further, it is the responsibility of each
6 department or commission director to insure that his personnel
7 are trained to a high preparedness level.

8 And then there is a table, Table 1, Annex B, RER
9 Training Requirements. And that table sets forth the subjects
10 on which various departments and actors under the plan are
11 required to receive training, correct?

12 A (Witness Lunsford) Yes.

13 Q And Table 2 sets forth the frequency; initial,
14 annual or quarterly, or semi-annually, right?

15 A Yes.

16 Q Okay. Now what I am interested in focusing on
17 is a very specific point. I want to know about the
18 Governor. I want to know about Governor of South Carolina,
19 and for you, Mr. Harris, the Governor of North Carolina.

20 And then I want to know about the Chairman of
21 the Mecklenburg Board of Commissioners. And then I want to
22 know about the York person. And I understand now that that
23 is Mr. Klough, the County Manager, by your testimony,
24 Mr. Thomas.

25 And I want to know specifically for each of those

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1 persons -- and then a person in Gaston appropriate to
2 Mr. Phillips -- what training have those persons who have
3 specific responsibilities under the plan, what training have
4 they received?

5 MR. CARR: Your Honor?

6 JUDGE MARGULIES: Your time has run out, counsel.

7 MR. GUILD: Can I have an answer to that question,
8 Mr. Chairman?

9 MR. CARR: I object to that question, your Honor.
10 I object on the basis that what we are doing here is going in,
11 once again, to a new subject matter. This is not -- the
12 question that is asked is not a question that is designed to
13 probe the lines of authority or the subject matter of this
14 contention. It is a very broad question which goes to
15 training of individuals under the plan. It is not a subject
16 of the contention, nor to my knowledge has it been the
17 subject of other contentions. It is a new subject area.

18 MR. GUILD: Mr. Chairman, it is our view that their
19 own testimony asserts -- and I think they agreed in the
20 foundation question I just got done asking -- that the only
21 way that you can implement the assignments of responsibilities
22 under the plan is by training persons who are assigned those
23 responsibilities in how they are to implement them.
24 That is part of 0654. It is included in the very criteria
25 to which Contention 8 speaks.

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1 We maintain that the only way to test the effective-
2 ness of the actors, the Governors, the County officials'
3 ability to respond, short of having their testimony which has
4 been barred us, and faced with asking these questions only of
5 the subordinate officials who are available to us including
6 those in front of us right now, is to ask them the question
7 that is now pending. And that is to say within their knowledge
8 what training have the various officials received who have
9 specific responsibilities, and I assert primary responsibili-
10 ties for evacuation particularly under the plan.

11 And, it is my last question, Mr. Chairman, but I
12 would like the record to reflect what knowledge these
13 witnesses have on that matter.

14 JUDGE MARGULIES: Your time has expired, counsel.
15 We will let it go at that.

16 MR. GUILD: Mr. Chairman, I would respectfully
17 move to have whatever additional time is necessary to have the
18 answer to that question in the record.

19 (Board conferring)

20 JUDGE MARGULIES: The Board rules, counsel, that
21 you have gone well over your time, and that the item is not
22 part of the contention.

23 MR. GUILD: Mr. Chairman, I am no more than five
24 minutes over my time, and I do take exception to the notion
25 that it is outside of the contention.

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1 JUDGE MARGULIES: Mr. Wilson?

2 MR. WILSON: I just have a few questions,
3 Mr. Chairman.

XXX

4 BY MR. WILSON:

5 Q Mr. Coleman, as to the loss of communications
6 telephonically from the plant for some reason as far as the
7 control room or the technical support center might go, are
8 there other Duke Power Company vehicles with radios or other
9 telephones in other portions of the plant which might still
10 be available for outside contact?

11 A (Witness Coleman) Yes.

12 Q All right, sir. And if for some reason telephonic
13 communication should be disrupted from those two locations that
14 were under discussion earlier, how long would you estimate it
15 would take to reestablish communication?

16 A That's a hard question to answer. It depends on
17 the extent of the damages of whatever destructs those
18 communications.

19 Q Would it be conceivably much longer than the
20 time to march out to the parking lot?

21 A Here again your hypothetical situation doesn't
22 give me enough information to answer that question.

23 Q Okay. Let's move on from there anyway.

24 As far as Mr. Thomas' outfit is concerned at the
25 County level, when you get a call from the plant as to a site

mm12 1 emergency or an unusual event out there, when there is an
2 evacuation recommended at that point, what happens, what do
3 you do?

4 A (Witness Thomas) This is an immediate --

5 Q Immediate release. They call you and tell you so.
6 What do you do?

7 A This is the first contact that we have gotten?

8 Q Yes, sir.

9 A There are several things that would take place
10 immediately. One, as it relates to protective action -- if
11 I understand the question correctly, we would consult with
12 Duke authorities, with the State and make a
13 correct decision as to what our response should be as a
14 protective action.

15 We have SOPs each individual would be following
16 to implement whatever action would be necessary, depending
17 on the severity of the case and the time element.

18 Q The specific protective action I am interested
19 in is the evacuation. If you would, as an example -- do
20 you have to wait on the State to be contacted, or would you
21 under your procedures in the plan, go ahead and order, if you
22 will, an evacuation to commence?

23 A We would prefer to discuss it with the State, but
24 it is not necessary.

25 Q All right. Now when we say an evacuation, what

13±mm 1 kind of resources are you mobilizing in that effort?

2 Well, first, let me ask you first, when an
3 evacuation is in order, does that necessarily have to come
4 from the Governor's office, or the State in order for you
5 to mobilize the evacuation alert?

6 A In our opinion, it does not.

7 Q All right, sir.

8 Is there any difference as far as the equipment
9 or personnel who are mobilized on your level, whether that
10 evacuation order comes from you or the recommendation of
11 Duke, or straight from the State Capitol?

12 A Not initially, no.

13 Q All right, sir.

14 Mr. Lunsford, in a radiological emergency as
15 far as the State Operations Center is concerned, who is the
16 first office to be contacted by Duke, or the local
17 individuals?

18 A (Witness Lunsford) The Bureau of Radiological
19 Health.

20 Q All right, sir. And who do they contact after
21 that?

22 A They contact our office and we, in turn, would
23 contact the County concerned.

24 There is a case, if it is an immediate problem,
25 that Duke would contact the County immediately. And even

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1 though we were eventually or subsequently notified of that,
2 we would still to close the loop, contact the County.

3 Q So, all right. Who calls the Adjutant General's
4 Office?

5 A We do.

6 Q Thank you, sir.

7 As to the specific emergency exercises that
8 are conducted at Catawba Nuclear Station, I believe it was
9 indicated those were part of the drills to see if these
10 plans in fact worked when they were implemented. Is that
11 basically right? Is that a correct statement of what was
12 earlier said?

13 A Yes.

14 Q And as far as the exercises, if any, that have
15 occurred, have you noticed any confusion as to the lines
16 of authority on who was in charge at what point, and
17 responsible for a given command?

18 A No. And I wouldn't expect any, because this was
19 not the first time that we had done this type exercise.

20 Q All right, sir. And would you expect it to be
21 the last time you will conduct such an exercise?

22 A No, we are required to do them periodically.

23 Q All right, sir. And each time that you conduct
24 them would you expect there to be some improvement as far as
25 ease with which they are implemented?

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2 A We are of the opinion that that improvement has
3 occurred as we have gone along over the last three to three
4 and a half years.

5 Q All right. Based upon your experience and
6 Mr. Harris' -- I am going to ask each of you to respond to
7 the question, and I would like you and Mr. Lunsford to answer,
8 please. As far as your experience goes, have you in the
9 exercise of this or similar emergency plans with fixed
10 nuclear facilities, identified any confusion as far as the
11 authorities are concerned and their respective areas of
12 responsibility?

13 Mr. Lunsford?

14 A No. And I believe if there have been the
15 evaluators who were looking from FEMA would have pointed out
16 any major discrepancies or any minor ones. And I can't recall
17 any along the lines that you are referring to now.

18 Q All right.

19 Mr. Harris?

20 A (Witness Harris) No.

21 MR. WILSON: Thank you, gentlemen.

22 That is all I have, Mr. Chairman.

23 JUDGE MARGULIES: Redirect?

24 MR. JOHNSON: Your Honor, the Staff has questions.

25 BY MR. JOHNSON:

Q Gentlemen, I have some questions about the shift

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1 in authority with respect to protective actions. And I would
2 like to first address North Carolina's plans, the two counties.

3 Mr. Harris, in your testimony on page 4, the
4 question that starts on line 15 and your answer that starts
5 on line 19. The answer says: "Under the North Carolina Plan
6 County Officials have full direction and control responsibili-
7 ties with State agencies acting as supporting organizations
8 until the SERT is in a position to assume full responsibility
9 for offsite response."

10 Is it correct then to understand that that is the
11 point at which primary responsibility for protective response
12 shifts from Mecklenburg and Gaston Counties as separate
13 Counties, to the State of North Carolina? The point at
14 which the SERT is activated at the Charlotte airport?

15 A (Witness Harris) Yes. It is a very formal
16 procedure, very carefully gone through. And that is the
17 point at which the State assumes prime responsibility for
18 protective actions. Up until that point the State acts in
19 a supporting role.

20 Q A supporting role?

21 A Yes.

22 Q Now, as part of establishing SERT, is it
23 necessary or is it a part of that process for the Governor
24 to declare a state of emergency?

25 A I would expect him to do so, yes.

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1 Q You would expect him to do so. But is it required,
2 is it a necessary part of establishing the SERT?

3 A No, it is not a necessary part. We do not
4 require it. It is not required that the Governor declare
5 an emergency before we respond. But I suspect what would
6 happen is during the process of our response he would declare
7 an emergency very early.

8 Q I am just trying to clarify the conditions
9 preceding the shift in responsibilities from the Counties to
10 the State.

11 As I understand it it is the establishment of
12 activation of the SERT and not the declaration of an
13 emergency by the Governor, is that correct?

14 A That's correct.

15 Q Okay. Now during the period prior to that point,
16 that is establishment of the SERT, the local authorities
17 have authority to order but not compel evacuation, is that
18 correct?

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1 Q During that period prior to the establishment of
2 the SERT, can the state order an evacuation in the same
3 sense?

4 A If the Governor -- anytime after the Governor
5 declares --

6 Q No -- I don't want to cut you off in one sense,
7 but I don't want you to go down the wrong avenue. What I'd
8 like to clarify is apart from the question of declaring an
9 emergency -- just forget that -- is there exclusive authority
10 with respect to protective actions that I just described
11 prior to the establishment of the SERT? And that is, when
12 the counties have primary responsibility, is it solely the
13 counties that can direct but not order -- order but not
14 compel an evacuation?

15 A Yes.

16 Q The states really are supporting --

17 A Yes.

18 Q Now, prior to the establishment of the SERT, is
19 it conceivable or possible that the Governor would declare
20 a state of emergency prior to the establishment of the SERT,
21 at which time the Governor would order or even directly compel
22 an evacuation? Is that possible, too?

23 A It's part of the process of organizing the SERT
24 and establishing that the Governor would declare an emergency.

25 Q In other words, he wouldn't do it beforehand,

1 activating the SERT?

2 A Yes. The Governor, in the process of activating
3 the SERT -- that's one of the processes we expect to
4 accomplish, would be a declaration of an emergency or disaster.

5 I should make clear that the point of the state
6 being in a supporting role and the state being in a primary,
7 leadership role is an operational consideration. And it deals
8 with establishment of communications, the establishment of
9 radio lines, land lines, and the gathering of enough personnel
10 to operate an Emergency Operations Center.

11 Q So that you don't contemplate under this plan that
12 there would be a period of time in which you would have
13 ostensibly the possibility of there not being a SERT? In
14 other words, the authority for protective action having
15 shifted to the states, a period in which that hadn't happened
16 but there's a declaration of an emergency or order by the
17 Governor by evacuation? You don't contemplate that happening?

18 A Let me make sure I follow you. I don't contemplate
19 a gap between the SERT when the SERT is operational, and then
20 a further gap before a disaster is declared. No, I do not
21 contemplate that.

22 Q Okay. Now after -- now we have established the
23 SERT, and it's up to the state now that has the primary
24 responsibility.

25 A Yes.

1 Q Now one of two things could happen, I assume.
2 You could have a situation where the Governor declines to
3 declare a state of emergency but the state nevertheless goes
4 ahead and decides we're going to direct but not compel an
5 evacuation. That's correct, isn't it? That's one possibility?

6 A Please restate your question. I couldn't hear you.

7 Q There's one possibility that after activation of
8 the SERT and the state assuming primary responsibility for
9 protective actions that the state would order an evacuation
10 without a declaration of an emergency by the Governor. That's
11 a possibility.

12 A Yes. I would suspect, though, that by the SERT
13 was established a declaration of a disaster would have already
14 taken place. I guess what you're saying could happen, but
15 it's not likely. That's part of the process of running or
16 establishing a SERT, would be to insure that we had the
17 necessary tools to do whatever job needed to be done, and
18 that would be that power you're talking about.

19 Q So at that point, once he declares a state of
20 emergency, he has all the options.

21 A Right.

22 Q Let me shift to South Carolina. What is --
23 Mr. Lunsford, let me ask you, and Mr. McSwain. What is the
24 point -- let me stop for a second. Let me refer to your
25 testimony.

(Pause.)

1 On page 6 of your testimony, starting at line 16
2 it says, "The responsibilities for protective action lies
3 with the Governor's Office representative, EPD Director and
4 DHEC representative on the Executive team when the SEOC
5 or FEOC is operational, and the state of emergency has been
6 declared.

7 Now I'd like to pursue the same line of
8 questioning I did with Mr. Harris. What is the point, what
9 is the condition precedent for the state to assume primary
10 responsibility for protective response? Mr. Lunsford?

11 A (Witness Lunsford) Under situations that we would
12 consider -- I don't want to say ordinary or routine, but
13 those that we would expect, usual circumstances where it's
14 an escalating emergency -- there would be a declaration of
15 the emergency by the Governor. The moment that declaration
16 is issued, the state would assume control.

17 Q And that would be what -- I'm sorry, go ahead.

18 A From York County, the only county we have that's
19 involved. Up until that time, York County has been calling
20 their own shots. We may be aware of it, we certainly should
21 be aware of it. But at that moment, we would assume the
22 directional authority.

23 Q And that's irrespective of whether the state
24 command and control people are established in Columbia or in
25 Clover?

1 A Yes, sir.

2 Q So that the key point is the Governor's declaration
3 of an emergency.

4 A Yes, and the Emergency Operations Center would be
5 open in Columbia under a usual set of circumstances.

6 Q Mr. McSwain wanted to add something, I believe.

7 A (Witness McSwain) The state emergency operations
8 under Columbia are the Forward Emergency Operation Center in
9 Clover is established with the Governor's emergency declaration,
10 declaration of an emergency. They are opened by the Emergency
11 Preparedness Division at the request of the Governor. That
12 is his order. That is the emergency declaration.

13 Q And at that point, primary responsibility shifts
14 from the county to the state.

15 A Right.

16 A (Witness Lunsford) There is an important thing to
17 consider here, as Mr. Harris brought up. By going in and
18 cutting on the lights in the Emergency Operations Center
19 would not necessarily mean that it was ready to operate at
20 that moment. We have to have some people to operate the
21 center and some support available to make sure that the
22 decision making process will take place in the right sequence,
23 environment, what have you.

24 Q Is there some formal process by which it's
25 declared operational?

1 A The declaration of the emergency is the thing
2 that triggers the operation.

3 A (Witness McSwain) We have representatives in
4 the -- in our office which can be almost immediate, as far
5 as the declaration, as soon as we get --

6 Q Speak up, please, it's hard to hear you.

7 A We have representatives in our State Emergency
8 Operations Center, so the declaration could be almost
9 immediate once it was -- it can be orally implemented and
10 then signed later.

11 Q Okay. And again, prior to the time that this takes
12 place, York County could order but not compel an evacuation,
13 and after that point, only the state can do so? Order or
14 compel an evacuation?

15 A That would be the normal chain of command in the
16 flow of events.

17 Q And like with North Carolina, there wouldn't be a
18 period of overlap where both the state and the county might
19 be in a situation of ordering an evacuation.

20 A No. Not at all.

21 Q Okay. Mr. Thomas, are you in agreement with
22 those answers?

23 A (Witness Thomas) Yes. The only thing I'd add is
24 that we would recognize possibly two significant events where
25 we would relinquish our responsibility for primary authority.

1 One would be the declaration, as Mr. Lunsford was explaining.
2 And secondly, their formal announcement that the fiat was
3 opened, if that happened without a declaration we would return
4 that over to them at that time. So either way.

5 Q From reading the plan and from your testimony
6 it's apparent that there's a strong desire to coordinate
7 the protective response, whoever has primary and whoever has
8 supporting responsibilities. And we had testimony about the
9 desire to have coordinated, or the same, EBS messages going
10 out, sirens be sounded at about the same time.

11 However, there is pre-filed testimony here that's
12 been presented that says in certain extreme or limited
13 circumstances, there might not be the opportunity for the
14 counties, in a situation prior to the declaration of an
15 emergency in which the relevant counties had the authority to
16 order an evacuation, to fully coordinate the response.

17 Is there anything -- is there any disagreement
18 among you gentlemen who have just been responding as to the
19 concept of operations that you seek in all circumstances to
20 have such a coordinated response, and to have coordination
21 among you so that you do achieve this contemporaneous
22 activation of the siren system, coordinated or same or similar
23 EBS messages, but that if need be, each county can act as it
24 sees fit under the circumstances that develop?

25 Is there any disagreement among you about that

1 concept of operations?

2 A (Witness Broome) The counties all have the same
3 concept, and I'm sure that Gaston County and possibly York
4 County might want to address this.

5 Q Could you speak up, please?

6 A I'm sure that Gaston and York Counties might want
7 to address this, but we all have the same basic concept, which
8 is to make sure that we're all talking from what we call
9 the same sheet of music, which is looking at the concept of
10 operations, making sure that we understand one another, and
11 if we're going to activate a system, especially a system that
12 has a direct impact on the part of the general public, we're
13 going to make every effort possible to make sure that that
14 information is coordinated among all the parties concerned.

15 Q Mr. Harris?

16 A (Witness Harris) I agree with that.

17 Q Mr. Phillips?

18 A (Witness Phillips) Yes, sir, we are in agreement.

19 Q Mr. Lunsford?

20 A (Witness Lunsford) I, of course, would defer to
21 the counties. You have stated a circumstance which is in
22 extremis. Is that not correct? In that --

23 Q Well, I've been positing a more total concept, that
24 in general, the concept is as we have been describing, a
25 division of primary and supporting authority and when it shifts,

1 and that we are -- that you're attempting to have a coordin-
2 ated response and that's likely to be possible in most
3 if not the great majority of circumstances. However, the
4 concept of operations also does not preclude counties when
5 circumstances require, from taking action without prior
6 consultation with the other jurisdictions.

7 And I just was asking the other gentlemen, is
8 yourself, whether there was any disagreement with that
9 concept of operations.

10 A No. And in some of the situations that have been
11 postulated here, that might be necessary. Those that appear
12 on one end of the scale where there is an immediate problem
13 at the plant, where information needs to be disseminated.
14 I can see that the counties, where time is of the essence,
15 would have to put the information out perhaps without
16 consultation. I don't have any disagreement with that. Is
17 that what you mean?

18 Q Yes.

19 A We have talked about that many times, and agree
20 that it's better for the three counties when they're in
21 charge of their own destinies, to consult. But there may be
22 a circumstance where time is of the essence, and in the
23 interest of the public it would be necessary for them to put
24 information out without consultation.

25 Q Thank you. Mr. McSwain, are you in accord with

1 those views?

2 A (Witness McSwain) I will agree with that.

3 Q And Mr. Thomas?

4 A (Witness Thomas) I have no problem with what he
5 said. I was just not aware of any scenario that we discussed
6 that we would recognize independent action. We are of the
7 opinion in York County, based on our understanding of the plan,
8 that we would always consult, even in an immediate, general
9 emergency. So I hear what they're saying, but that's kind of
10 new to me in the sense of recognizing any situation that
11 would allow independent action. Even in an immediate general
12 emergency we would seek to consult with Mr. Broome and
13 Mr. Phillips, along with the state officials before we put out
14 any EBS message.

15 MR. JOHNSON: Okay, thank you.

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1 JUDGE MARGULIES: My understanding of the testimony
2 is that of Mr. Thomas and this whole matter of acting
3 independently to me is a totally new concept and that had not
4 come out through the entire testimony.

5 MR. JOHNSON: It may not have been in the South
6 Carolins testimony. I think there was some reference to it
7 in Mr. Phillips' testimony if I am not mistaken.

8 JUDGE MARGULIES: I will ask applicant's counsel to
9 go into this matter because for me it changes everything that
10 we have heard here today.

11 MR. MCGARRY: Are you talking about the ability
12 of the counties to take emergency actions or are you talking
13 about the ability of the counties to take emergency actions
14 without consulting any state officials?

15 JUDGE MARGULIES: Without consulting them.
16 My concept of the testimony was the same as he stated it
17 that in all cases there would be consultation.

18 THE WITNESS: Your Honor, my testimony was as it
19 relates to the EBS and the sounding of the sirens not to
20 recommending protective action. That is still consistent
21 with what you said.

22 JUDGE MARGULIES: Right.

23 BY MR. JOHNSON: (Resuming)

24 Q Let me refer, I believe it is Mr. Phillips, to his
25 testimony on page four starting on line 12 and the question is

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1 "Do local officials also have the authority to order evacuation
2 or other protective action?" Answer, "Yes." Question, "With
3 whom must they consult before doing so?" Answer, "It if
4 pertains to saving lives and property, my dispatchers can
5 order evacuation or other protective action. Normally
6 they will check with me before doing so, if time permits."

7 I understood that to be an extreme exigency that
8 if time did not permit consultation that the people on the
9 scene would have the authority to recommend or order protective
10 action in extreme circumstances. Is that correct, Mr.
11 Phillips?

12 A (Witness Phillips) What I meant by that was
13 it is a happening thing right now and they got to get it out,
14 they have the authority to set the sirens off and to send the
15 fire departments out on their warning notification. That is
16 what I meant by that.

17 Q But in terms of consultation with other jurisdictions,
18 what does that assume with respect to sirens or EBS messages?

19 A They would coordinate with the other two counties,
20 the dispatchers would on the siren activation and the EBS
21 message.

22 Q So you are not saying that you would operate
23 independently without a consultation?

24 A No, sir.

25 Q Mr. Broome.

1 A (Witness Broome) We have taken basically the same
2 position that Mr. Phillips has and if I understood His Honor
3 with reference to the question, I think Gaston County and
4 Mecklenburg County and to my knowledge possibly York County
5 have the ability to take action without necessarily coordin-
6 ating with the state but they would coordinate among the
7 three counties to make sure of what we are doing.

8 Q I see. Is there anybody who is in disagreement with
9 what was just stated by Mr. Broome?

10 A (Witness McSwain) No.

11 A (Witness Lunsford) No.

12 A (Witness Thomas) I think he said the same thing
13 I did.

14 Q Okay. Mr. Harris?

15 A (Witness Harris) No disagreement.

16 JUDGE MARGULIES: I believe that clarifies it.
17 Thank you.

18 MR. JOHNSON: Thank you. That is all I have.

19 MR. GUILD: Your Honor?

20 (Board conferring.)

21 JUDGE MARGULIES: You may proceed, Mr. Guild.

22 BY MR. GUILD: (Resuming)

23 Q On this last point gentlemen, it seems to me that
24 the point that Mr. Phillips was trying to make was that if
25 all cane was breaking loose and life and property required that

1 the lowest person in the emergency response chain and that
2 is the dispatcher perhaps has to have the authority to order
3 immediate protective action and he is not going to take the
4 time to call up Mr. Broome or to call up Mr. Thomas or to call
5 up anybody else if circumstances are such that immediate
6 life-threatening action is occurring and evacuation must be
7 directed immediately. Isn't that the case, Mr. Phillips?

8 A (Witness Phillips) If they have the time, they will
9 consult. But if they don't have the time then they can set
10 the sirens off and order the fire department people.

11 Q It seems to me that if they have the time assumes
12 that they make some kind of a decision on an ad hoc basis
13 based on the information they get from the plant because that
14 is where the word comes from that saving people's lives is
15 more important and requires immediate siren activation and
16 immediate transmission of the EBS message to evacuate, let's
17 say, or shelter -- whatever is appropriate -- and does not
18 permit that dispatcher who may be sitting there at three
19 o'clock in the morning to take the time instead to pick up the
20 phone and call Mr. Broome in Mecklenburg County, Mr. Hayward
21 Schieling in Columbia at the Bureau of Radiation Health
22 or the gentleman in Raleigh who might provide additional
23 expertise and that is the case in Mecklenburg County, isn't
24 it, Mr. Broome?

25 A (Witness Broome) Yes. I think we ought to keep in

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1 mind time. We are not talking about an hour later that
2 everybody is going to get together. We are not talking
3 probably 30 minutes. We are not even talking probably ten
4 or 15 minutes. We are talking, I think, and Mr. Phillips
5 is correct and my dispatcher has the same position that Mr.
6 Phillips has. It is not going to take but just a minute
7 with the system that is in place to pick up the phone and
8 say, "Look, we are activating our sirens because of the
9 protective action recommendation made by Duke Power Company
10 in message format blah, blah blah." The message format is
11 the same for both Gaston and Mecklenburg.

12 Q What I want to know is this because it seems to me
13 the only way to have your cake and eat it to on this score
14 is you have to say, if the circumstances warrant it you push
15 the button and you tell people to scam first. Then you call
16 up your fellow county people and the state people and tell
17 them what you just done. Isn't that the authority that you
18 vest in the dispatcher?

19 Mr. Thomas, you are shaking your head. I want to
20 know. Is that the authority?

21 A (Witness Thomas) That is not the way it is in York
22 County.

23 Q All right. In York County you have to make the
24 first phone calls and consult. Is that what you are saying?

25 A Before we proceed to activation of the sirens and

1 before we release an EBS message, our directions to our
2 people are coordinate first.

3 Q Coordinate with the other county people?

4 A Correct.

5 Q Coordinate with the state people?

6 A No.

7 Q Coordinate with you?

8 A No.

9 Q Coordinate with somebody else in York County?

10 A Not necessarily, no.

11 Q So who is it you are talking about when you said
12 the other county people?

13 A The other people at the other end of the ring down
14 phones in the two counties.

15 Q All right. What is the difference in Mecklenburg?

16 A (Witness Broome) It can be done in a matter of
17 probably 60 to 90 seconds.

18 Q I want to understand though, are your instructions
19 to the dispatch people at the warning point different from
20 Mr. Thomas', Mr. Broome?

21 A The procedures would be the same, to coordinate the
22 efforts.

23 Q First coordinate and then protective action.

24 A Well, if you want to say that 90 seconds is going to
25 make a difference, you are probably right in the "if" situation

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1 that you are trying to address, Mr. Guild. But I don't think
2 that 90 seconds is going to make a difference with regard to
3 a course of protective action and I don't see that it would
4 take any longer than that because of the communications system
5 that is in place to coordinate among Gaston and York.

6 Q I just want to know what the instructions are and
7 are they clear. What is step number one to those circumstances,
8 is it call Gaston County and York County, Mr. Broome, or is
9 it push the button and start the sirens and get the EBS
10 message going? Which is first?

11 A Push the button.

12 Q Is that true, Mr. Phillips, for Gaston?

13 A (Witness Phillips) It could be either way. I have
14 a sufficient number of dispatchers in my communications center
15 that one of them could coordinate on the telephone and the
16 other one could sound the sirens.

17 Q At any one time?

18 A Yes, if it came to it, yes, sir.

19 A (Witness Broome) I think one thing Mr. Guild to
20 keep in mind is when the siren system is activated, it is
21 activated for a three-minute cycle. The EBS is activated
22 within five minutes. There is sufficient time during that
23 reference to make sure that York County and Gaston County
24 are basically looking at the same information.

25 Q So that is your time to get the message straight, but

1 you have already pushed the button and the sirens are on.

2 A The siren whether I am a minute behind Gaston County
3 or 30 seconds behind York County, I don't think is significant
4 with regard to a course of protective action because the
5 sirens mean go to EBS and get tuned into EBS.

6 Q That is what you intend them to mean?

7 A I think previous testimony has reflected that
8 effort.

9 Q All right. The SERT for North Carolina and the FEOC
10 for South Carolina, those are people in a place. With respect
11 to South Carolina it is a designated official at the Clover
12 National Guard Armory, correct, Mr. Lunsford?

13 A (Witness Lunsford) Yes.

14 Q With respect to North Carolina, it is designated
15 officials at Douglas Airport, correct?

16 A (Witness Harris) Yes.

17 Q What is the significance of those designated
18 officials when they are in transit from let's say Columbia to
19 Clover or Raleigh to Douglas? Are they the SERT and the FEOC
20 respectively or are they just people in transit with no
21 responsibilities under the plan?

22 A The State Emergency Response Team is the state
23 emergency response team but here is what happens when it gets
24 activated. You should keep in mind that the key members have
25 radio communication in their automobiles when they are

1 travelling back and forth.

2 Q Right.

3 A Or if we travel by helicopter we have radio
4 communication while in the helicopter in route. While we
5 are in route however if the county needs support, they can
6 either come directly to us and we have done that or they
7 can go direct -- we also activate the EOC, kind of a back-up
8 SERT support staff who remains at the EOC in Raleigh to insure
9 continued support for the counties until the SERT arrives on
10 site. That staff back at the Raleigh Emergency Operation
11 Center would continue to coordinate the state support of
12 the county until such time as the SERT could arrive and
13 set itself up.

14 Q Is the SERT activated in Raleigh?

15 A Yes.

16 Q Do they have authority in Raleigh?

17 A Yes.

18 Q They have authority when they are in transit?

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1 A Yes, they have the authority but they're still in
2 a support role. You are confusing, Mr. Guild, legal
3 authority with operational consideration.

4 Q I was confused, but I don't think I was confused --

5 A The SERT acts in a support role until it takes
6 over in a formal manner from the county.

7 Q It takes over when the Governor issues a
8 declaration of disaster in North Carolina, right?

9 A Two things have to -- the state or the SERT has
10 to be established to the point it knows it can operate a
11 control operation, and the state disaster has to be declared.
12 We would have coordinated this with the counties and they
13 would have issued the message.

14 Q Okay. In South Carolina, Mr. Lunsford?

15 A (Witness Lunsford) It is somewhat different but
16 not much. We open up the Emergency Operations Center, and
17 when the decision is made to establish a Forward Emergency
18 Operations Center or to dispatch an Emergency Operations
19 Center in Columbia, it's still in charge, has the authority.
20 While the officials are traveling they have no authority,
21 but they are in radio contact with the EOC. We proved we
22 could do this at the exercise at Catawba. And once the
23 Director of the Emergency Preparedness Division and the
24 representative of the Governor's office, in the case that
25 we're talking about, the Director of Division of Public

1 Safety are on the scene with sufficient staff, the decision
2 is made to transfer the authority from Columbia to Clover.

3 Q Page 4 of your testimony, Mr. Lunsford, where you
4 change your testimony to strike SEOC, State Emergency Operation
5 Center, and insert FEOC, Forward Emergency Operations Center,
6 reflects the point you just made, correct? The Director of
7 the Emergency Preparedness Division takes command when he is
8 in position at Clover. That's the way it should read after
9 the change, correct?

10 A Yes. They really should be the decisionmaking
11 group there because this is our decisionmaker in the division.
12 As we have referred to, there's the group --

13 Q You say decisionmaker and you parenthetically say
14 customarily would be the director. That should be stricken
15 and you should replace the executive team that you have
16 described -- team decisionmaker?

17 A If I were changing it again, I would change it to,
18 "and the decisionmakers are present in the FEOC," or "in
19 position in the FEOC."

20 Q What's got me confused, Mr. Lunsford, if your
21 director is still in Columbia, but the State Emergency Opera-
22 tions Center has been activated, then your director or
23 decisionmakers, plural, are in charge; correct?

24 A Our director, when the Forward Emergency Operations
25 Center is given the word to move out of Columbia, moves.

1 Q SEOC, not FEOC now. They have started, they have
2 organized the State Emergency Operations Center in Columbia,
3 and that team then is in charge in Columbia, right?

4 A Yes.

5 Q They they're going to move, they're told to go,
6 and it's going to take them 2½, 3 hours I guess is what you
7 testified. Do they stop being in control, and does control
8 go back to the county while they're in transit?

9 A No. There's a team that works in the Emergency
10 Operations Center that gives continuity in the case when
11 the director departs.

12 Q In Columbia?

13 A The deputy director is in charge in the Emergency
14 Operations Center, which is in charge of the operation.

15 Q Okay.

16 And in the case of the Governor's office, it's
17 the Governor's representative, Mr. Sanders, where he would
18 be moving out also. And Mr. Blum, who is his deputy, would
19 remain at the Emergency Operations Center in Columbia.

20 Q All right. So the confusion is created on
21 page 4, line 9 by the use of the term "Director", suggesting
22 a person who can't be in two places at one time. What you
23 really meant to suggest there is a team, some portion of which
24 may be in transit while a portion of which remains behind
25 with the continuing authority that they have, having established

1 the SEOC.

2 A The authority is in a place with competent
3 individuals making the decisions until a decision is made
4 to change the place of authority.

5 Q Okay. Now, Mr. Broome, Mr. Wilson was asking
6 questions about -- of all of you gentlemen about your
7 experience in improving coordination and eliminating confusion
8 and conflict through exercising and drilling the plan.

9 Mr. Harris, you described this function, I gather,
10 as -- I'm looking at page 3 of your testimony, sir. "We have
11 used the same basic plan for three other nuclear power plants,
12 and this plan has been exercised, critiqued and fine-tuned
13 many times in the past."

14 Mr. Broome, Mr. Harris, what I want to know is what
15 is the fine-tuning you've referred to there. What glitches,
16 deficiencies, needs for improvement with respect to
17 coordination have you identified?

18 A (Witness Broome) One change that comes to my mind
19 specifically was in one of the initial exercises that was
20 conducted with Mecklenburg County we had a problem with the
21 shift of command. As a result of that, a document indicated
22 in Part 1 of the basic plan for Catawba is not in place
23 which eradicates that problem.

24 Q Okay. Does that specify who's in charge at any
25 given time?

1 A It specifies that, and I think addresses, to some
2 extent, the procedures associated with it.

3 Q All right. Mr. Harris, are you aware of other
4 fine-tuning coordination?

5 A (Witness Harris) Yes. That's one of the things
6 that's been changed over a period of time, is the formalized
7 way -- formalizing to a very definite point in time and a
8 definite set of conditions in which the primary responsibility
9 switches from the local government to the state government.

10 Q And how is that need for fine-tuning identified,
11 Mr. Harris?

12 A It establishes an exact point at which it occurs,
13 exact set of conditions.

14 Q What I want to understand is how was it identified,
15 the need to make that improvement? What happened that led
16 you to do that?

17 A Several exercises ago -- I don't know how many
18 years ago it was now -- there was confusion as to exactly
19 when the SERT took over.

20 Q Okay. And finally, Mr. Lunsford, I think previous
21 testimony reflects, does it not, that with respect to the
22 Catawba exercise, in fact, the FEOC at Clover had already been
23 substantially set up prior to the beginning of the exercise.
24 Isn't that right?

25 A (Witness Lunsford) I did not make that testimony.

1 Q No, sir. It was made by an observer and was
2 discussed during, I believe, the testimony of either the
3 FEMA witnesses or someone else, and that was to the effect
4 of the exercise would have had more realism if, in fact, there
5 had not been prior organization of the facility at Clover.
6 And I simply want, if you know, Mr. McSwain or others, isn't
7 it a fact? Can you confirm that at Clover there was prior
8 organization, in substance, of the FEOC before the onset of
9 the exercise?

end 21

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1 A (Witness Lunsford) I arrived after the exercise
2 began and saw that the -- I believe -- communications vehicle
3 was in place. That's the organization that I saw.

4 Q Mr. McSwain, do you know?

5 A (Witness McSwain) There was limited participation.

6 Q And do you agree with the critique by the
7 evaluator that a more realistic test of the establishment
8 of the FEOC would be one where there was not a parior organi-
9 zation of that facility; that you had to actually do it from
10 scratch as you would in real life?

11 A To some degree we have done that on several
12 exercises. We have demonstrated that point several times.

13 Q But with respect to Catawba, though, you haven't.
14 And with respect to Catawba, you would agree that the exercise
15 would have been and would be more realistic if you didn't
16 in essence, have a head start on setting up the Clover FEOC.

17 A I don't know. Just to make it more realistic,
18 there would have been a little delay time as far as that.
19 But as far as the realism, I don't think it would have had
20 that much effect on it.

21 Q Time is what I was interested in. It would increase
22 the time to set it up if you hadn't had a head start, right?

23 A Well, you're still falling within that 3½ hours,
24 and we so stated.

25 MR. GUILD: Thank you, gentlemen.

1 JUDGE MARGULIES: Mr. Riley?

2 BY MR. RILEY:

3 Q Under the hypotheses that we've considered, it
4 would be credible that one dispatcher under some circumstances
5 could initiate evacuation and decide that Option E on
6 page D-3 of the North Carolina State Plan should be put on
7 the EBS, and the second case would be that three dispatchers
8 might make that decision, or at least coordinate on it. Is
9 that correct?

10 A (Witness Broome) Who are you addressing your
11 question to, Mr. Riley?

12 Q Well, that was generally put. Do you want to
13 respond, Mr. Broome?

14 A If you would repeat your question while I'm going
15 to D.3, I would appreciate it.

16 Q Well, the question is could not from one to three
17 dispatchers coordinating one singly or three coordinating
18 decide on the issuance of Option E, referred to, I guess,
19 as message A on page D.3?

20 A Could all three dispatchers agree --

21 Q Excuse me, there are two possibilities. Assume
22 the dispatcher could initiate the EBS with message A, called
23 Option E --

24 A On page D.2?

25 Q Yes. No, D.3.

1 A Option E, Item 3?

2 Q Well, the whole thing. It's almost a page.

3 A Okay. Now what is the question?

4 Q A single dispatcher under some circumstances would
5 have the authority to initiate this message on the Emergency
6 Broadcast System. Is that correct?

7 A When you say single dispatcher, are you speaking
8 of a dispatcher from Mecklenburg County only?

9 Q It could be any county, if I understood
10 Mr. Phillips' testimony correctly.

11 A I think it would go back to what I indicated
12 originally, and Mr. Phillips or Mr. Thomas might want to
13 have input and reference to it. The sirens could be punched
14 out. There's a timeframe built into the plan that says that
15 the EBS should be activated within five minutes of activation
16 of the sirens.

17 That being the case, that is more than enough
18 time -- if it's Mecklenburg County's dispatcher -- to pick
19 up the selective signaling system device which is in place,
20 and call Gaston County or York County and indicate that we're
21 going to activate the Emergency Broadcast System, Item D.3,
22 Option E, and go with that.

23 Q Which means that in the scenario you've just given,
24 three dispatchers conferring could result in the EBS being
25 initiated, right?

1 A That's correct.

2 Q How long would it take for the station, then, to
3 get the broadcast on the air? Does the station have canned
4 the particular message or would it have to be specifically
5 given? It looks to me as though it might have to be
6 specifically given, because zones are referred to and distance
7 is referred to.

8 A All you've got to do is fill in the blanks, in
9 reference to Option E, and if everything else is in a canned
10 form -- I'm not familiar with WBCY and how they operate,
11 but knowing how they operated in the past with regard to
12 Emergency Broadcast System's primary stations, if it's just
13 a matter of filling in the blanks, then the necessary data
14 is in place and it would be just a matter of inserting the
15 area where we've got blanks here, and then rebroadcasting it
16 over the system.

17 Q Is the mechanics of this that an announcer then
18 takes this message, which he already has had, fills in the
19 blanks and reads the message on the air? Is that it?

20 A That's my understanding of it. However, within
21 that context it's my understanding that the people at EBS
22 would have to address it in specific terms.

23 MR. RILEY: That's all.

24 JUDGE MARGULIES: Redirect?
25

1 REDIRECT EXAMINATION

2 BY MR. MC GARRY:

3 Q There was a question concerning the operability
4 of the communications system. Did you follow those
5 questions, Mr. Coleman?

6 A (Witness Coleman) Yes.

7 Q Are you familiar with the information systems
8 at Catawba?

9 A Yes.

10 Q I'm referring -- the communications systems I'm
11 referring to pertain to emergency communications systems.
12 Are you familiar with those?

13 A Yes.

14 Q Are you familiar with the Commission's regulations
15 or the regulatory requirements pertaining to emergency
16 communications systems?

17 A Yes.

18 Q Does Catawba satisfy the Commission's requirements
19 or regulatory requirements -- to the best of your knowledge?20 MR. GUILD: Objection. It calls for a legal
21 conclusion on the part of the witness. Counsel should argue
22 in their proposed findings from the factual testimony of
23 the witnesses whether it meets requirements or doesn't meet
24 requirements.

25 MR. MC GARRY: Your Honor, our response is that the

1 witness if familiar with the system, he's familiar with the
2 regulatory requirements and he's an expert witness who is
3 capable of giving an opinion. We asked him to the best of
4 his knowledge.

5 JUDGE MARGULIES: Where has it been established in
6 the record that he is knowledgeable of the regulatory
7 requirements?

8 MR. MC GARRY: I just asked him that about two
9 questions ago, Your Honor.

10 JUDGE MARGULIES: There was a conclusion in that
11 question. As far as I'm concerned, you could develop it,
12 but all you did was ask the conclusion in your question.

13 MR. MC GARRY: Your Honor, I was trying to speed
14 it up, given the fact it's now 5:30.

15 MR. GUILD: Mr. Chairman, it just opens up a whole
16 new area. I respect Mr. Coleman's expertise in communications
17 and factual technical matters, and that's the substance of
18 his testimony. If they want to open a whole new door about
19 his legal opinions about whether they meet regulatory
20 requirements, we will be plowing this ground considerably.
21 It's beyond the scope of his direct testimony and requires
22 a foundation that has not been established in expertise.

23 (Board conferring.)

24 BY MR. MC GARRY:

25 Q Mr. Coleman, are you familiar with the regulatory

1 requirements set forth in 10 CFR Part 50, Appendix B, and
2 it would be Subsection E, titled "Emergency Facilities and
3 Equipment", Number 9, and it says at least one onsite and
4 one off-site communication --

5 MR. GUILD: Excuse me, objection, Mr. Chairman.
6 You don't ask a witness whether he's familiar with the law
7 by reading him the law. He's going to say well, now I am.
8 The question -- you can't qualify a witness on that basis,
9 and I object to it.

10 MR. MC GARRY: Your Honor, I find this almost
11 bordering on the ridiculous. We have spent half a day listening
12 to this panel give legal conclusions based on interpretations
13 and questions from counsel for the Intervenors. We did not
14 object to a large extent to those questions.

15 Given the time, we have tried to move through this
16 as expeditiously as possible to establish that this witness
17 is familiar with the regulations. I can hand him the
18 regulations, I can hand him NUREG-0654, he can spend five
19 minutes or two minutes going through them. He indicated he
20 was familiar with them. I would be glad to do it.

21 MR. GUILD: It's a waste of time, Mr. Chairman,
22 fundamentally. If they want to present this as part of
23 their direct case, then we would have something to shoot at.

24 We presented a case on cross examination because
25 yes, we believe that the plan is obligated to demonstrate the

1 legal authority behind assignments of responsibilities.
2 They made that offer in their own evidentiary exhibits when
3 they put the plan in. It's simply unnecessary, it's a waste
4 of time, if there ever was a waste of time. Mr. McGarry is
5 a competent lawyer, he can certainly make the argument
6 that Mr. Coleman's testimony stands for the proposition that
7 they qualify under the regulations.

8 But it's really unnecessary and opens up a requirement
9 for further cross examination on a new subject. I don't want
10 to do it, and I urge that it's irrelevant to the contention
11 at issue, and it's beyond the proper scope of redirect.

12 MR. MC GARRY: The reason we're pursuing this,
13 Your Honor, is that the Board permitted the Intervenors to
14 postulate a hypothetical which we objected to, that postulated
15 the loss of emergency communications capabilities.

16 Mr. Coleman is the individual who designed the
17 emergency communication capability at Catawba, and we'd like
18 to establish with this witness, given their hypothetical
19 line of questioning, whether or not the emergency communication
20 system complies with the regulations and regulatory guidance.

21 MR. GUILD: And that, Mr. Chairman, seems to me --
22 I appreciate some explanation because it helps to understand
23 the nature of what is objectionable.

24 Why can't that be argued by counsel? It is a
25 legal conclusion from the factual evidence. If it is

1 Mr. McGarry's position that there's no regulatory requirement,
2 it doesn't need to be elicited from an expert in communications
3 and radios.

4 JUDGE MARGULIES: The objection is overruled.
5 You may proceed.

6 MR. MC GARRY: To expedite this, I'll hand these
7 documents to the witness.

8 (Counsel handing documents to witness.)

9 BY MR. MC GARRY:

10 Q Mr. Coleman, I believe you indicated you have
11 familiarity with the regulations and the regulatory guidance.
12 You take your time. I've handed you two documents which I
13 believe are, indeed, the pertinent documents --

14 MR. GUILD: Mr. Chairman, I'd just like to say
15 I'd like to voir dire the witness as to his qualifications.
16 If he's now been handed the entire 10 CFR and 0654 and is
17 being offered as an expert on regulatory compliance now, I
18 would seek to challenge his qualifications. And he can have
19 all the time he wants to to read the documents that are
20 being given to him by counsel, but we would seek a right to
21 voir dire the witness on that subject.

22 JUDGE MARGULIES: He has been asked in terms of
23 a limited area, and the request to voir dire is denied.

24 MR. GUILD: He's been handed the entire 10 CFR,
25 Mr. Chairman.

1 JUDGE MARGULIES: Well, he can't tear out the
2 pages and give them to him.

3 MR. GUILD: I have no idea what he's directing
4 the witness's attention to. He said, familiarize yourself,
5 take your time. He can't ask a more broad question that
6 tries to qualify a witness than that.

7 BY MR. MC GARRY:

8 Q Mr. Coleman, you have indicated in response to
9 my questions your familiarity with the Commission's
10 regulations and regulatory guidance concerning emergency
11 communications systems. Is that correct?

12 A (Witness Coleman) That's correct.

13 Q What regulations and what regulatory guidance
14 were you referring to?

15 A I was referring to Section 10 CFR 50.47, paragraph
16 6, I believe, and the appendix to that particular section.

17 Q And would that be Appendix E?

18 A Yes, it would.

end 22

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1 Q What regulatory guidance were you referring to?
2 In addition to the regulations was there another document
3 you were referring to, regulatory guidance?

4 A Yes. There is a criteria which according to my
5 understanding is an interpretation of these guidelines.

6 Q What criteria is that, sir?

7 A Criteria for preparation and evaluation of
8 radiological emergency response plans and preparedness in
9 support of nuclear power plants.

10 Q Is that NUREG-0654?

11 A NUREG-0654, yes.

12 Q What particular page or criteria are you making
13 reference to?

14 A This is page 47 dealing with emergency communica-
15 tions.

16 Q Sir, if I didn't you the question let me ask you now,
17 are you responsible for the design of the emergency communica-
18 tions system at Catawba?

19 A Yes.

20 Q Given your familiarity with the regulations and the
21 regulatory guidance, is it your opinion being the designer
22 of the emergency communication system that Catawba's emergency
23 communication system satisfied the regulation and the regula-
24 tory guidance?

25 MR. GUILD: Objection.

1
2 JUDGE MARGULIES: Objection overruled. The witness
3 may answer the question.

4 WITNESS COLEMAN: It is my opinion that we more than
5 satisfy the regulations.

6 BY MR. MCGARRY: (Resuming)

7 Q Can you explain how do you more than satisfy the
8 regulations?

9 A (Witness Coleman) The regulations call, for
10 instance, for at least one on site and one off site communica-
11 tions system. This is referred to in Appendix E of Part 50.
12 We in actuality have several on and off site systems. On
13 site systems, we have the P&T radio system, the security
14 radio which is an independent system for the crisis management
15 radio system. Off site, we have also P&T radio systems,
16 system paging and communications links to the counties.

17 Q Am I correct in my understanding that you will be
18 able to use any of those systems to deliver a message from the
19 station to outside organizations?

20 A Yes.

21 Q Mr. Thomas, you made reference to ring down and I
22 believe there has been testimony by previous panels concerning
23 the ring down system. Am I correct in my understanding of the
24 ring down that that is a system wherein the plant calls the
25 pertinent jurisdictions?

A (Witness Thomas) Right.

1 Q Is that system a system that when the station calls
2 the various jurisdictions, that it is a one-on-one or is it a
3 party line to the best of your knowledge?

4 A It is similar to a party line.

5 Q So when a ring down system is used to call a
6 dispatcher, if they call a dispatcher at York County
7 would to your knowledge the dispatcher of Mecklenburg County
8 and the dispatcher of Gaston County also be on the line?

9 A It would have that ability.

10 Q Is that your understanding, Mr. Phillips?

11 A (Witness Phillips) Yes.

12 Q Is that your understanding, Mr. Broome?

13 A (Witness Broome) Yes, it is.

14 Q Then is it conceivable gentlemen that during that
15 phone conversation those dispatchers could discuss the
16 coordination?

17 A Very much so.

18 Q Do you anticipate that they would use that opportunity
19 to discuss coordination?

20 A (Witness Phillips) Yes.

21 A (Witness Broome) Yes.

22 Q Mr. Broome, you responded affirmatively?

23 A Yes.

24 Q Mr. Thomas?

25 A (Witness Thomas) Yes.

23-4

1 Q Mr. Lunsford and Mr. McSwain, there was some
2 discussion of interrogatory 8-28 and that had to do with the
3 attorney general's interpretation. Question 8-28 was
4 "Wherein is vested the authority to call up public transporta-
5 tion buses? Is there legal authority to order drivers into an
6 EPZ under conditions of potential high radiation dosage? If
7 so, please cite." The answer provided by South Carolina
8 attorney general, "Although not specifically identified the
9 Governor's emergency powers may provide authority as to
10 publicly owned transportation and government drivers."

11 Do you recall the colloquy that you engaged in with
12 Mr. Guild, gentlemen?

13 A (Witness Lunsford) Yes.

14 A (Witness McSwain) Yes.

15 Q Do you have any reason to dispute the attorney
16 general's response to interrogatory 8-28?

17 A (Witness Lunsford) No.

18 Q Am I correct in my understanding that the plan calls
19 for response by various organizations with respect to the
20 transportation? I am making reference to the volunteer fire
21 department. I believe the testimony previously given indicates
22 that they would be called upon. Is that correct?

23 A Yes.

24 Q Is there any reason that you gentlemen have to
25 believe that the individuals who would be called upon to

1 respond would not so respond and would not go back into the
2 zone?

3 A I have no indication of that.

4 Q Mr. McSwain.

5 A (Witness McSwain) I have no reason to think that.

6 Q Does any member of the panel have any reason to
7 believe that emergency vehicle drivers would not enter the
8 emergency zone?

9 A (Witness Broome) I have none.

10 A (Witness Thomas) No.

11 Q There was some discussion, Mr. Lunsford and Mr.
12 McSwain, concerning Mr. Sanders and his role being the
13 designee of the Governor in his capability of commanding
14 and controlling an emergency. Do you recall that discussion?

15 A (Witness Lunsford) Yes.

16 Q If Mr. Sanders is not available, if he is on
17 vacation, who then would fulfill his responsibilities?

18 A I would imagine the person who is fulfilling his job
19 in his absence on a routine day-to-day basis.

20 Q Mr. McSwain, do you have anything to add to that?

21 A (Witness McSwain) No.

22 Q Mr. Lunsford and Mr. McSwain, Intervenor focused on
23 table three of your plan wherein you listed the primary and
24 the secondary responsibilities. Do you recall that?

25 A Yes.

23-6

1 A (Witness Lunsford) Yes.

2 Q Mr. Harris, a similar focus was placed on the North
3 Carolina plan. Do you recall that?

4 A (Witness Harris) Yes.

5 Q In each instance there was one organization that
6 was designated as the primary control point, is that correct?

7 A (Witness Lunsford) Yes.

8 A (Witness McSwain) Yes.

9 A (Witness Harris) Yes.

10 Q With respect to the focus of those two tables it
11 appeared that there were several organizations that were
12 designated the secondary control role, is that correct?

13 A (Witness Lunsford) Support.

14 Q Secondary support role, is that correct?

15 A Yes.

16 Q With respect to those secondary support organizations,
17 are they in any order or any heirarchy?

18 A No. They are collective.

19 Q So it doesn't make any difference if one is
20 above the other, is that correct?

21 A (Witness Harris) That's correct.

22 A (Witness Lunsford) Correct.

23 Q Am I correct in my understanding that those
24 organizations provide whatever support they can to the
25 primary focal point, is that correct?

1 A (Witness Harris) Correct

2 A (Witness McSwain) Yes.

3 A (Witness Lunsford) Yes.

4 Q There was some discussion of DHEC, Mr. Lunsford and
5 Mr. McSwain. Do you have any reason to believe that that
6 office will not respond in accordance with the plan?

7 A No.

8 Q Mr. McSwain?

9 A (Witness McSwain) No, I have no reason to believe
10 that.

11 MR. CARR: I have just a couple of questions, Your
12 Honor.

13 BY MR. CARR:

14 Q Mr. Broome, this morning this conversation that you
15 and Mr. Harris had with Mr. Riley about assuming a back-up
16 position in the absence of message from the station, this
17 hypothetical accident that occurred. Let me just ask you,
18 wouldn't Duke assuming a situation occurred at the plant
19 alert you well before a general emergency was declared --
20 before they declared a general emergency?

21 A (Witness Broome) We are notified at the initial
22 stage the unusual event stage.

23 Q So if an event were to occur which in accordance
24 with this hypothetical situation which resulted in a loss of
25 communication given the fact that it would require a precursor

1 you would have had prior notice that something was occurring
2 at the plant?

3 A Yes.

4 Q I have some documents that I want to show these
5 gentlemen. They are just discovery documents. I would like
6 to address these to Mr. Harris. You and Mr. Riley had talked
7 this morning about an answer to I believe it is interrogatory
8 8-5, is that correct? That interrogatory says --

9 MR. JOHNSON: Could you please refer to the set?

10 MR. CARR: I think it is the responses of the 21st.
11 It is the one that reads, the question is whether the discussions
12 of decontamination are required to meet a common standard and
13 the answer is no, see responses 3-15, 3-16, 6-7 and 6-8.

14 MR. JOHNSON: What is the question number?

15 MR. CARR: Question 8-5.

16 MR. JOHNSON: Thank you.

17 BY MR. CARR: (Resuming)

18 Q I am going to show you just quickly, Mr. Harris, the
19 answers referred to in that interrogatory. I believe that you
20 stated in response to a question by Mr. Riley that although
21 your answer may have been no, your plan complies with 0654.
22 Is that correct?

23 A (Witness Harris) That is correct.

24 Q Let me show you the answers to 3-15 and 3-16 which
25 are in applicant's March 29, 1984 supplemental responses to

23-9

1 first round interrogatories.

2 A (Perusing document.) Okay.

3 Q I ask you if those answers contain information of the
4 nature called for by NUREG-0654?

5 A Yes.

6 Q I show you the answers from the same document,
7 interrogatories 6-7 and 6-8.

8 A (Perusing document.) Okay.

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1 Is that information of the nature called for in
2 0654?

3 A Yes.

4 Q Thank you.

5 Mr. Broome, let me move this book over to you,
6 because you and Mr. Riley also talked about discovery
7 responses. And, let's go to question 8-10, which is Applicant's
8 March 20, '84 supplemental responses, and you talked about
9 decontamination of property, livestock, buildings, et cetera.
10 And your answer was that the procedure would be based on the
11 leadership from the State office which has the lead in
12 recovery operation, is that correct?

13 A (Witness Broome) Correct.

14 Q Now let me point you to the State answer to that
15 same interrogatory. Would you read that State response to
16 8-10?

17 A Response is as follows: "A general discussion of
18 protective actions for the ingestion exposure pathway is
19 outlined in the North Carolina Plan, Part 1, pages 64 through
20 69."

21 Q And I hand you Part 1 of the State Plan and ask
22 you if those protective actions for ingestion exposure pathway
23 are what you had in mind when you provided the answer to
24 interrogatory 8-10?

25 A Yes, it does. Specifically Item 5, Paragraph 5,
Items A, alpha, through H, hotel.

mm2 1 Q All right, Mr. Broome, one final point.

2 You and Mr. Riley discussed the answers to
3 interrogatory 8-15, which reads: Do Mecklenburg County
4 Police "assist" in monitoring Part 3, Page 6, or do they
5 monitor?

6 And you had provided the answer and explained the
7 answer that you gave there. You were then showed the State's
8 answer to interrogatory 6-4.

9 Do you recall that?

10 A At that point I became confused.

11 Q So I show you now the State's answer to interroga-
12 tory 6-4 as provided in Applicants' March 29, '84 supplemental
13 interrogatory responses, and ask you if that answer, which
14 you may read into the record, is inconsistent with your answer
15 to the interrogatory 8-15?

16 A Response to question 6-4 is as follows:

17 "Approximately 200 State and County law enforcement
18 personnel will immediately be available. Other law
19 enforcement and National Guard personnel will be on alert.
20 Under stagnant conditions there will be time to react and
21 alert other law enforcement personnel."

22 Q Is that inconsistent with your answer?

23 A No, it isn't.

24 Q Mr. Harris, you were asked, I think, with respect
25 to conversations about committing medical resources that you

mm3
1 may have had. And I just ask you, sir, with respect to that
2 is there a place within the plan for North Carolina where
3 medical facilities are listed?

4 A (Witness Harris) Yes.

5 Q Let me show you, I believe it is Part 1 of the
6 plan at page 81, in Section 3A on page 81 and ask you if
7 that is what you have in mind there?

8 A Yes.

9 And it continues on the next page.

10 Q I beg your pardon?

11 A And it continues on to the next page.

12 Q Now you and Mr. Guild talked briefly about the
13 table on page 28 under Command and Control, and he asked you
14 why the Governor wasn't listed there.

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Let me just show you attachment 1 to Part 1 of
19 the plan which is entitled Authorities, References and
20 Agreement, and ask you with respect to 3A which begins on
21 page 1-2 and goes across to 1-3, to read subparagraph B
22 there.

23 A To delegate any authority vested in him --
24 Authority of the Governor for Emergency Management. To
25 delegate any authority vested in him by this law and to

mm4

1 provide for the subdelegation of any such authority.

2 Q Okay. And am I correct in thinking that his
3 authority has been delegated to the Secretary for the
4 Division of Crime Control and Public Safety?

5 A Secretary of the Department of Crime Control and
6 Public Safety.

7 Q Is that correct?

8 A Yes.

9 Q Let me just ask the panel in general, you and
10 Mr. Guild discussed the exercise and the drill and the
11 requirements in the plan. Am I correct in thinking that at
12 least one exercise with respect to the Catawba Emergency Plan
13 was held in February?

14 A That's correct.

15 A (Witness Broome) That's correct.

16 A (Witness Phillips) Yes.

17 A (Witness McSwain) Yes.

18 A (Witness Lunsford) Correct.

19 A (Witness Thomas) Yes.

20 Q Did you gentlemen -- and I am asking the panel
21 collectively -- did you notice confusion or lack of coordina-
22 tion during this drill with respect to lines of authority,
23 who was responsible for what?

24 A (Witness Harris) No.

25 A (Witness Broome) No.

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1 A (Witness Phillips) No.

2 A (Witness McSwain) No.

3 A (Witness Lunsford) No.

4 A (Witness Thomas) No.

5 Q With respect to communications among, to and from,
6 and between Catawba, the two States, the three Counties and
7 the Federal Emergency Management people, was there confusion
8 or lack of coordination in that regard?

9 A (Witness Harris) No.

10 A (Witness Broome) No.

11 A (Witness Phillips) No.

12 A (Witness McSwain) No.

13 A (Witness Lunsford) No.

14 A (Witness Thomas) No.

15 Q And did you observe a lack of coordination between,
16 and or among Duke Power Company, the State of North Carolina,
17 South Carolina, the Counties of Mecklenburg, Gaston and York?

18 A (Witness Harris) No.

19 A (Witness Brome) No.

20 A (Witness Phillips) No.

21 A (Witness McSwain) No.

22 A (Witness Lunsford) No.

23 A (Witness Thomas) No.

24 MR. CARR: That is all I have, your Honor.

25 JUDGE MARGULIES: Any further examination?

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1 MR.RILEY: Yes, sir.

2 RECROSS EXAMINATION

3 BY MR.RILEY:

4 Q Mr. Coleman, how many facilities for communications
5 such as you just referred to are on the inside of Catawba
6 station? I am talking about redundant communication facilities.

7 A (Witness Coleman) I don't recall right off the top
8 of my head. I would be glad to look at the list.

9 You are talking about radio facilities, telephone
10 or what?

11 Q Any means of having contact with EOCs, or other
12 relevant groups in this context.

13 A If I could call attention to my testimony in
14 Contention 18, I think these were all addressed.

15 Q If you can just tell me, how many were inside
16 the Catawba Station itself, how many points inside the
17 station in your originating police communications?

18 A It is hard to define points when you are talking
19 about telephone circuits. There may be as many as 2- or 300
20 phones that we have access to.

21 I think you have to clarify your question if you
22 want an answer.

23 Q Let's say how many transmission sites?

24 In other words, you have got a transmitter for any
25 of these means of reaching out to a distance.

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1 A I'll ask again, are you talking about regular
2 transmitters or telephone communication transmitters.

3 Q Let's do the radio transmitter part first. How
4 many radio transmitters?

5 A Okay. We have a crisis management control facility;
6 security radio control facility; P&T -- production and
7 transmission control facility. These are all located in
8 the control room.

9 Q Are there any other transmitters in addition to
10 that?

11 A Just a moment please.

12 As far as radio goes, that covers it in the
13 control room.

14 Q Would you take the position that each separate --
15 of the 200 or so phones, is that for all intents equivalent
16 to a transmitter in the sense you can reach outside through
17 appropriate switchgear?

18 A No, I don't think I would agree with that in that
19 we have a telephone switching PBX onsite at Catawba that has --
20 each of the phones at Catawba station are connected to this
21 PBX switching device. And they have numerous trunk circuits
22 that go to the outside world, Rock Hill, Lake Wylie exchange,
23 Gastonia exchange, the Charlotte exchange by way of Duke
24 Power microwave.

25 It is hard to talk about communication points.

mm8

1 Q Let's get a picture, how many transmitters then
2 do you have located outside the station?

3 Your testimony was that there are also transmitters,
4 I believe, outside the station?

5 A Right. We have corresponding transmitters outside
6 the station on the crisis management radio network.

7 We have transmitters for this particular system
8 at each of the County warning points, the South Carolina
9 Forward Emergency Operations Center and the North Carolina
10 SERT.

11 Q With respect to the transmitters that are inside,
12 is there any particular radiation shielding in the vicinity
13 that one would be located, in sending out a message from these
14 transmitters?

15 A Are you referring to the transmitters inside of
16 the plant?

17 Q Inside the plant.

18 A Okay. The radio transmitters are not actually
19 located in the control room as such. They are located on
20 site with control facilities being located in the control room.

21 Q In regard to the location of the control facilities,
22 is there radiation shielding such that a person could operate
23 those phones with a high level of surrounding ambient
24 radiation without receiving an appreciable dosage?

25 A I'm not in a position to answer that. I will add

mm9

1 that I do know that there is very heavy leaded shield around
2 the central and secondary alarm stations which contain
3 radio equipment on the security radio system.

4 Q That would not affect a person, would it? That
5 is not personnel shielding?

6 A No, this is a room --

7 Q It is instrument shielding?

8 A This is a room shield, is my understanding.

9 Q Right.

10 Now have you any basis for saying that given the
11 information and hypothesis that the dose level in plant in
12 that vicinity is of the order say of 10,000 rems an hour
13 that anyone that would stay to send out a message --

14 MR. MC GARRY: Your Honor, we are going to object
15 to this line of questioning. We are now getting 10,000 rems,
16 an amount of radiation in the control room, or some other such
17 technical support center.

18 We think it is beyond the scope of our redirect.

19 MR. RILEY: Mr. Chairman, the point I am trying to
20 make is this: We have dealt with postulated accident in
21 which the response by the Applicant has been, we have a
22 number of transmitters in the vicinity. And I am raising
23 what I think is a perfectly reasonable question.

24 If there is a high-level ambient radiation, have
25 they any basis for saying yes, people would get out the word.

mm10

1 I think it is rather unreasonable that people would
2 stay if they were placed in grave personal danger, and could
3 save themselves by simply getting into their cars and driving
4 off.

5 JUDGE MARGULIES: I am going to sustain the
6 objection.

7 BY MR. RILEY:

8 Q Mr. Broome, you were talking about accident
9 scenarios a little earlier, and indicated you thought there
10 would be an early indication that would put people at the
11 EOCs on notice that something might be developing at the
12 Catawba station.

13 Are you familiar with reactor breach scenarios?

14 A (Witness Broome) Reactor breach scenarios?

15 Q That's right.

16 A Yes.

17 Q Are you aware at the reactor breach scenario there
18 would be zero notification time, zero preliminary events?

19 MR. CARR: Do you mean containment breach?

20 MR. RILEY: No, reactor breach.

21 MR. CARR: Your Honor, let me just interpose an
22 objection here. If I am not mistaken, my question to
23 Mr. Broome went to whether Duke would notify Mecklenburg
24 County at a stage prior to declaring a general emergency.

25 The answer to that question was yes.

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MR. RILEY: And the thrust of my question, Mr. Chairman, is that there are some scenarios in which there would not be such an early notification that a severe accident was about to happen.

end T24

6:00 P.M.

(6:00 p.m.)

1 MR. JOHNSON: Your Honor, this matter has been
2 covered in cross examination. It really doesn't seem like
3 a matter to be raised in redirect.

4 MR. GUILD: It was, indeed, a new matter. The
5 premise for the redirect was that there would be a precursor
6 event, and that seems to me, puts a new fact in issue which
7 is that there would be sufficient prior escalating levels of
8 emergency to provide adequate response.

9 It's fair game when Mr. Carr poses a new factual
10 premise that elicits the desired response from Applicants
11 for Intervenors to recross, to focus on the validity of that
12 presumed event, presumed fact shall I say.

13 MR. CARR: Perhaps I wasn't clear enough in my
14 objection. The redirect went to the hypothetical postulated
15 by Mr. Riley this morning, which we objected to, which was
16 a hydrogen explosion.

17 There are precursors to a hydrogen explosion.
18 for example, you have to have a loss of coolant accident.
19 Given that, there will be prior notice, and as Mr. Broome
20 has testified, they will be notified. Now, that is the
21 accident to which my question on redirect was limited, and
22 upon which the hypothetical was based.

23 I object to bringing in a brand new accident at
24 6:00 o'clock in the evening.

25 MR. GUILD: Mr. Chairman, it's Mr. Carr's own

1 postulated redirect question and he has to live with it.
2 He doesn't immunize it from being the target of examination
3 since he raised it. He may not like the answer that's likely
4 to be elicited on challenge, but he raised the point himself.
5 And the record should not be allowed to stand simply with
6 counsel for Applicant's injecting a new factual premise that
7 leaves the record the way they like it. They injected a new
8 matter, and that was that there would be a precursor event
9 that would provide sufficient time for alerting local
10 officials.

11 We submit that that's not necessarily implicit in
12 a reasonable accident scenario for which planning is required.

13 JUDGE MARGULIES: The objection is sustained.
14 It's a new postulate that Mr. Riley is bringing in. The
15 question that Mr. Carr went into went into Mr. Riley's
16 original hypothetical.

17 (Pause.)

18 MR. RILEY: That will be all, thank you.

19 (Pause.)

20 MR. RILEY: I couldn't read my notes there but
21 I've deciphered it. May I proceed with the question?

22 JUDGE MARGULIES: You have one question?

23 MR. RILEY: I have one area. It has to do with
24 the medical provisions and the statements in the North
25 Carolina plan.

1 JUDGE MARGULIES: Does it relate to coordination
2 of the groups, or does it relate to the merits of the system?

3 MR. RILEY: Well, it relates to the response to
4 Mr. Carr's redirect question in which he cited page 81, and
5 indicated that yes, there was a medical plan and I'd like
6 to flesh out just a little bit what that medical plan is.

7 On page 79, for example, under Medical Public
8 Health Support it says, "Few hospitals in the state have the
9 internal capability to evaluate radiation exposure and
10 internal contamination."

11 On page 81 which was cited, Charlotte Memorial
12 is referred to, the hospital has a plan to treat 10 patients
13 is the bottom line. On the next page, Gaston Memorial Hospital
14 has a limited plan to treat 5 patients, and that's it. And
15 I simply wanted to show what it was in its totality.

16 JUDGE MARGULIES: You may.

17 BY MR. RILEY:

18 Q Have you been following this colloquy, Mr. Phillips?

19 A (Witness Phillips) Yes.

20 Q Can you -- I'm sorry, I meant Mr. Harris for this
21 one. Mr. Harris?

22 A (Witness Harris) What is your question, sir?

23 Q Do I cite the North Carolina plan correctly when
24 I refer on page 79 to Item B as read a few moments back?

25 A What was your comment about paragraph B?

1 Q I simply read it, and I'm asking if I read it
2 correctly.

3 A I didn't hear you.

4 Q "Few hospitals in the state have the internal
5 capability to evaluate radiation exposure and internal
6 contamination." Is that a correct reading?

7 A Yes.

8 Q On the following page -- this, you will agree, is
9 all in the section on Medical and Public Health Support,
10 part B, starting on page 79.

11 A Yes.

12 Q On page 81, Item 3, there's a cataloging of
13 North Carolina hospitals in the vicinity of Catawba Nuclear
14 Station, their capabilities are noted. The bottom line on
15 Item A, Charlotte Memorial Hospital, is the hospital has a
16 plan to treat 10 patients. Correct?

17 A Yes.

18 Q And on the following page there's one more
19 hospital referred to, Gaston Memorial. And the bottom line,
20 the hospital has a limited plan to treat five patients. Is
21 that correct?

22 A Yes.

23 Q And is that the totality?

24 A No.

25 Q I mean the totality with respect to hospitals?

1 A No. If you'll go back up to paragraph 3 on page 81,
2 it also says, "RPS maintains a list of locations of other
3 hospitals at greater distance from the station that will
4 provide backup support.

5 MR. RILEY: Thank you. That's it.

6 BY MR. GUILD:

7 Q Mr. Coleman, are you aware, sir, of the general
8 regulatory requirement imposed on Applicants that includes
9 the area of emergency communications, and that is to demon-
10 strate that effective protective action can and will be taken
11 in the event of a radiological accident at the Catawba
12 Station?

13 A (Witness Coleman) Would you repeat that question?
14 I'm sorry.

15 Q Are you aware of the general regulatory require-
16 ments, sir, applicable to emergency communications as well
17 as other areas, that obligates Duke Power Company to
18 demonstrate that effective protective action can and will be
19 taken in the event of a radiological accident at the Catawba
20 Station?

21 A I think I'm familiar with the regulations in regard
22 to communications. I couldn't address the other areas.

23 Q You didn't know that, then.

24 A I was aware that there were some regulations, but
25 I'm not versed in them.

 Q All right. Not knowing that but accepting as a

1 premise that that is a regulatory requirement imposed on
2 your area as well as on Applicants, would you agree, sir,
3 that in a postulated accident where the communications
4 facilities for the disabled were unusable because of the high
5 levels of radiation at the receiving end, if you will, at the
6 transmitting end I mean to say, that your ability to meet
7 that regulatory requirement would be adversely affected?

8 A Certainly. I think we can hypothesize many
9 things that would interrupt communications, but I'd like for
10 you to note that we have various control facilities utilizing
11 many systems we've just gone into that would minimize that
12 particular happening, or the possibility of that happening.

13 Q Yes. You don't mean to suggest, though, that there
14 aren't any accident scenarios which are among those in the
15 planning basis for NUREG-0654 that would not themselves
16 make effective communications impossible? There are some areas
17 that were included in the planning basis, aren't there?

18 A I would say that there are always things that can
19 happen that could interrupt communications.

20 Q All right, sir. Now, Mr. Harris, with respect to
21 the absence of the Governor from the table of primary and
22 support responsibilities, Figure 4, Part 1 of your state plan,
23 counsel for Applicants postulated that perhaps that reflected
24 a delegation by the Governor to the Department of Crime,
25 Control and Public Safety, and that's why the Governor wasn't

1 on that table. Do you remember that question and your answer
2 to that, sir?

3 A (Witness Harris) Yes, I remember that, sir.

4 Q And it's your position that the Governor made
5 such a delegation and that's why he's not listed in that table?

6 A Yes. That's generally the way we operate.

7 Q Well, what I would like you to tell me then is to
8 indicate to me in the primary legal authority underlying the
9 State plan of North Carolina; that is, the North Carolina
10 Emergency Management Act of 1977, wherein it provides that
11 the Governor can delegate his authority for first declaring
12 the existence of a stated disaster, and second, directing and
13 compelling evacuation with the concurrence of the counsel of
14 state. Can he delegate that responsibility? And if so,
15 please indicate where that -- I'll show you the statute if
16 you'd like.

17 MR. CARR: I'm going to object to that, Your Honor,
18 on the grounds that this does call for a pure legal conclusion.

19 Now, I will be happy to point out to Mr. Guild
20 the attachment 1 --

21 MR. GUILD: No, I don't need you to point out --

22 MR. CARR: Excuse me, Mr. Guild. Attachment 1 is
23 that statute, and Mr. Harris read it into the record. It
24 says the Governor has the right to delegate any authority
25 vested in him by this law, the North Carolina Emergency

1 Management Act of 1977, and to provide for the sub-delegation
2 of any such authority, period. Section 3.B.

3 MR. GUILD: Well, that's real helpful, Mr. Chairman,
4 but my problem is I've got a question for the witness,
5 and I'm not looking for Mr. Carr's testimony.

6 The question for the witness is to indicate in
7 that authority where the Governor is empowered to delegate
8 the delegation of his duty to declare a state of disaster,
9 and to direct and compel evacuation upon concurring with
10 counsel of state, to the Director of the Department of
11 Crime Control, Public Safety or any other --

12 JUDGE MARGULIES: What did you just read from,
13 Mr. Carr?

14 MR. CARR: I read from Attachment 1 to the North
15 Carolina Emergency Response Plan, which as I understand it,
16 is the North Carolina Emergency Act of 1977 (GS, General
17 Statute, 166A-1, et seq.)

18 MR. GUILD: I understand that to be the case, if
19 that is a quotation in the attachment to the plan. The
20 question remains for the witness, though.

21 Mr. Carr doesn't -- if he had an objection, his
22 objection, it seems to me, is not well taken. The witness
23 who was asked by Applicants to tell us why the Governor
24 wasn't listed in the state plan as having proper responsibility
25 says well, he apparently delegated it. Now, I'm asking the

1 witness to tell me, based on that authority, where the
2 delegation power resides.

3 JUDGE MARGULIES: Well, if it's in the state
4 statute, what more do you need?

5 MR. GUILD: Because I submit it isn't, Mr. Chairman,
6 I submit that the answer is wrong, that the record is
7 incorrect, and that Applicants' elicited answer is inaccurate,
8 and that instead you should find and conclude that the
9 Governor should be indicated as having primary responsibility
10 because he cannot delegate that.

11 Now, that's a question for the witness, though,
12 and not for me to argue or for Mr. Carr to argue, or for the
13 Chair to simply decide by fiat. It's a question of fact for
14 the witness.

15 JUDGE MARGULIES: Why can't we take official
16 notice of the statute that Mr. Carr read from?

17 MR. GUILD: Because it doesn't answer the question,
18 sir. It's a factual question of whether or not the Governor
19 had made that delegation, and whether or not in light of that
20 fact there's effective coordination or assignment of primary
21 and support responsibility. We submit there is not.
22 But the question is for the witness to answer.

23 JUDGE MARGULIES: Your question is as to whether
24 the Governor has actually made a delegation?

25 MR. GUILD: That was the first question. He said he

1 thinks he has. Now I want to ask him to show me what the
2 basis and authority in his view is for having made that
3 presumed delegation. It's a question of fact.

4 MR. CARR: That's a matter for official notice,
5 Your Honor. The statute is clear --

6 MR. GUILD: No, the statute is not clear, and it's
7 a matter for the witness to explain.

8 (Board conferring.)

9 JUDGE MARGULIES: Would you read that statute
10 again, Mr. Carr?

11 MR. CARR: Yes, sir.

12 (Mr. Carr handing document to the Board.)

13 MR. CARR: This is Attachment 1 to the North
14 Carolina State Plan.

15 (Pause.)

16 JUDGE MARGULIES: Are you reading from the same
17 statute, Mr. Guild?

18 MR. GUILD: Mr. Chairman, I'm looking for my
19 copy. I have a copy of the Code provision Xeroxed from the
20 general statute's code, and I presume it's an accurate
21 reading of the Code.

22 I submit that it's a non sequitor to suggest
23 that the Governor of North Carolina is both required, as
24 the witness's testimony says, to declare a state of disaster,
25 confer with the counsel of state, go through the publication

1 requirements that the witness's testimony reflects if, at the
2 same time, he can sub-delegate all his powers. And I heard
3 what Mr. Carr read, but I submit to you, sir, that that
4 legal -- that the interpretation that says you can delegate
5 all these powers makes the plan's other terms meaningless.

6 JUDGE MARGULIES: Now what is your question?

7 MR. GUILD: My question is to find out what, in
8 fact, the plan presumes and what, in fact, then, this witness
9 bases his last answer to Mr. Carr's question on. And that
10 is, what is the legal authority he is relying on for the
11 presumption that the Governor has delegated away these
12 responsibilities.

13 JUDGE MARGULIES: I will let the witness answer if
14 he knows.

15 BY MR. GUILD:

16 Q Mr. Harris, has he delegated these responsibilities?
17 And if so, where do you find the legal authority that says
18 the Governor can give up what I understand to be his sole
19 responsibility for declaring a disaster and directing and
20 compelling evacuation?

21 A (Witness Harris) The way it works in practice, and
22 the way I read command and control, I think that's the one
23 you're referring to -- is that the term there?

24 Q Yes, sir, that's the term in your plan, command
25 and control.

A That to me means operational command and control.

1 In practice, the way it works is the Secretary of the Depart-
2 ment of Crime Control and Public Safety runs the operations
3 through -- he has further delegated that -- through -- and
4 he also takes part in it -- through the Division of Emergency
5 Management.

6 The Governor, if it becomes necessary to declare a
7 disaster, normally signs the declaration of disaster.
8 Now, if he is out of town or out of place, then I'm sure the
9 law of succession would take place, and someone else would
10 sign it.

11 Q Right. Well now you're changing your answer.
12 What I want to understand is if the Governor has none of those
13 responsibilities because he's delegated them all, declaring
14 a disaster, directing and compelling evacuation upon consulta-
15 tion with the counsel of state, he doesn't have to do any of
16 those things because he's delegated them.

17 Show me in this statute -- it's the attachment to
18 your plan-- where the authority for that delegation resides,
19 because I want to understand what you're assuming about the
20 delegation, sir.

end 25

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6:15-6:30

1 A (Witness Harris) The only delegation that I can
2 point to is the same one that I read into the record earlier,
3 Mr. Guild.

4 Q All right. That is the authority that Mr. Carr
5 has read again. That is what you rely on?

6 A Yes. That is the authority for the governor to
7 delegate.

8 Q You understand that authority as allowing him to
9 delegate all of his powers, all of his responsibilities
10 including the declaration of a state of disaster?

11 MR. CARR: That is a purely legal question, Your
12 Honor, and I will object to it on those grounds.

13 MR. GUILD: No, it is not.

14 MR. CARR: It certainly is.

15 JUDGE MARGULIES: I will let the witness answer it.

16 WITNESS HARRIS: I feel confident to answer, Your
17 Honor, on the basis of operational matters. The way this
18 thing works from an operational point of view --

19 BY MR. GUILD: (Resuming)

20 Q I am sorry. I missed your answer. Say it again,
21 please. You feel incompetent to answer?

22 A (Witness Harris) I am not competent to answer this
23 from a legalistic standpoint. I will answer your question
24 from an operational standpoint.

25 Q Do you presume that the Governor does anything or has

1 he delegated it all away? That is what I really want to know
2 not as a matter of legalities but I want to know as a matter of
3 fact under the plan's implementation.

4 A No. The Governor is kept briefed at all times
5 as to what is going on during an emergency.

6 Q Does he have to set his pen to a piece of paper and
7 declare a disaster, is that your understanding?

8 A Yes, sir.

9 Q He can't give that authority to somebody else?

10 A I don't know that, sir. But I know how it normally
11 works is that what normally happens is the Governor signs
12 the declaration. If the declaration is necessary, the Governor
13 signs it.

14 Q Notwithstanding the normal responsibility of the
15 Governor to declare a state of disaster, the Governor is not
16 shown as having a primary responsibility under your plan?

17 A Again, Mr. Guild, from my point of view that command
18 and control is command and control of the operation.

19 MR. GUILD: Thank you. That is all I have.

20 JUDGE MARGULIES: Is there anything further?

21 MR. MCGARRY: No, sir, Your Honor. We request that
22 the panel be excused.

23 JUDGE MARGULIES: The Panel is excused and thank you
24 for your indulgence here today. It has been a very long day
25 and a difficult day and thank you very much.

1 (Panel excused.)

2 MR. GUILD: Mr. Chairman, we had understood that
3 in rejecting our request for the issuance of subpoenas for
4 the Governors of North and South Carolina that a premise of
5 your ruling was that we would have available senior officials
6 whose knowledge you presumed was sufficient to prevent
7 prejudice and harm to this party given the desired subject.

8 For that reason I understood you to grant the
9 subpoena request for Mr. Sanders who is the Governor's
10 delegee in South Carolina. We face the problem in part
11 because you said that you also relied upon Mr. Pugh's
12 availability as the Governor's delegate in North Carolina.
13 in light of Mr. Pugh's absence today of not having a senior
14 North Carolina official with knowledge available to us and we
15 presumed that Mr. Pugh's unavailability today does not mean
16 that he would not be available in the coming three days to
17 supply that information that we need in lieu of Governor Hunt's
18 testimony.

19 If that is not a correct presumption, then at this
20 time we would renew our request for the subpoena of the Governor
21 of North Carolina.

22 MR. MCGARRY: Your Honor, our response is we object
23 to that motion. We think that Mr. Harris has adequately
24 responded to questions posited by the Intervenors. Mr. Harris
25 responded on behalf of the State and I believe the testimony of

1 other witnesses on other contentions representing the State of
2 North Carolina fulfill the responsibilities and answer the
3 questions adequately. There is no need to call Governor Hunt
4 to this proceeding.

5 JUDGE MARGULIES: He is not speaking about Governor
6 Hunt. He is talking about Mr. Pugh.

7 MR. MCGARRY: I don't believe there is any reason to
8 call Mr. Pugh. I think it was clear that Mr. Harris could
9 answer the questions. This Board is familiar with Mr. Pugh.
10 I think Mr. Harris answered the questions in a similar fashion
11 Mr. Pugh would answer those questions.

12 MR. GUILD: Mr. Harris only stood cross-examination
13 on the sponsored testimony. That was the limitation of the
14 scope of the questions I could ask him. It was the limitation
15 of the scope of the questions I physically could answer him
16 in the limited time I had available. I was cut off, in fact.

17 I seek Mr. Pugh because this Board has put me in the
18 position of not having available the primary witness that I
19 sought and that is the Governor of North Carolina. Mr. Pugh
20 is not here today. We submit that if the foundation for the
21 Chair's ruling in denying us the subpoena authority for the
22 Governor stands that it is based on the availability of his
23 next in line in emergency planning matters and that is Mr.
24 Pugh.

25 We asked that Mr. Pugh be made available to respond

1 to questions that we would have asked the Governor in his stead
2 and failing Mr. Pugh's attendance in the next several days,
3 we renew our request to subpoena the Governor. It is the
4 premise behind the denial of our subpoena for the Governor.

5 MR. MCGARRY: The point is, Your Honor, the testimony
6 that was proffered and has been admitted into evidence for
7 the State of North Carolina on contention eight was originally
8 sponsored by two gentlemen, Mr. Pugh and Mr. Harris. Mr. Pugh
9 wasn't here. Mr. Harris sponsored that testimony. If Mr.
10 Pugh had been here, it would have been the same testimony.

11 The cross-examination is limited to the scope of the
12 direct. There would have been the same questions asked and
13 Mr. Harris answered those questions. There is no reason to
14 call Mr. Pugh.

15 JUDGE MARGULIES: Does Staff wish to be heard?

16 MR. JOHNSON: We subscribe to the views of Mr. McGarry
17 with respect to contention eight. I must confess that I didn't
18 hear all of Mr. Guild's motion but to the extent that it goes
19 beyond contention eight, Mr. Pugh has been here and it wouldn't
20 make any sense to compel his testimony on matters for which
21 he has already testified.

22 JUDGE MARGULIES: Would you have a copy of the
23 transcript of my ruling?

24 MR. MCGARRY: Yes, Your Honor. Was that last Friday?

25 JUDGE MARGULIES: A week ago Friday.

1 MR. McGARRY: We would, yes, Your Honor. I think
2 it is page 2743.

3 (Board members conferring.)

4 JUDGE MARGULIES: At page 2746 of the transcript
5 I stated the fact that they have the ultimate responsibility
6 and I was speaking about the Governors does not mean that they
7 have the sole knowledge as to what the requirements are and
8 how the office operates and functions and to that end we will
9 approve your request to subpoena Frank A. Sanders who is the
10 Director of Public Safety Programs in the Office of the
11 Governor of South Carolina; and Mr. Pugh from North Carolina
12 who is responsible for emergency planning and will testify in
13 conjunction with the panel on contention eight and will be
14 available here.

15 On that basis we will issue a subpoena for Mr.
16 Pugh.

17 MR. McGARRY: I would like to make Mr. Pugh's point.
18 I didn't personally speak with Mr. Pugh but I would like the
19 record to reflect that he called us up yesterday at five
20 o'clock and indicated that he would like to be here but he
21 couldn't because the Governor directed him in the next seven
22 days to file various reports that he wasn't able to file
23 because he had spent one month in this proceeding.

24 He told us that the only way that he would come
25 was a subpoena. This Board has now issued one but I want the

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1 record to reflect that those are the facts.

2 JUDGE MARGULIES: When we made the ruling we
3 anticipated that Mr. Pugh would be here.

4 MR. MCGARRY: Yes, Your Honor. I would like the
5 Board to focus on the point that Mr. Harris number two in that
6 office. There is Mr. Pugh and Mr. Harris. Mr. Harris is Mr.
7 Pugh's deputy. He is not some five levels removed.

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1 MR. GUILD: Mr. Chairman, it shouldn't be our
2 burden to track down Mr. Pugh. I think we are entitled to
3 Mr. Pugh's testimony.

4 But you know it is as if we anticipated he was
5 going to be here today because he was going to sponsor this
6 testimony. He wasn't. You know, I understand that. But, it
7 is like we are interfering with the ability of the North
8 Carolina Emergency Management people to conduct their
9 affairs.

10 JUDGE MARGULIES: The Board has ruled and we
11 will issue the subpoena this evening.

12 MR. GUILD: Well, as a practical matter I cannot
13 get served in time to get him here tomorrow, so you put me in
14 a position by this arbitrary position we close off hearings
15 Friday, and by him not appearing by Applicant's volition --

16 JUDGE MARGULIES: You have several more days,
17 counsel.

18 MR. GUILD: We have until Friday.

19 JUDGE MARGULIES: Yes.

20 What time is your first witness expected to come
21 in tomorrow, Mr. Guild?

22 MR. GUILD: The subpoenas were returnable at 9:00
23 a.m. tomorrow, Mr. Chairman.

24 JUDGE MARGULIES: We will recess until tomorrow
25 morning --

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1 MR.MC GARRY: Your Honor, could we be heard on
2 One is we don't propose that we argue this at
3 this point in time, but Mr. Riley has an outstanding motion
4 for a new contention. Perhaps sometime this week we can
5 discuss that.

6 The second point is in fairness to us and in
7 fairness I imagine to the Staff and the State of South Carolina,
8 it would be awfully helpful to know who we are going to have
9 to prepare for tomorrow. There are 17 or 16 outstanding
10 subpoenas to testify on eight contentions over three days.

11 Who comes tomorrow? Will all 16 come tomorrow?
12 How do we proceed?

13 JUDGE MARGULIES: Can you tell us who is expected
14 to come in tomorrow, Mr. Guild?

15 MR. GUILD: Mr. Chairman, I grieve for Duke, but
16 Duke's problem is primarily a problem of its own creation
17 because they opposed issuance of all the subpoenas and put
18 us in a position where only at the last minute did we find
19 out we have the prerogative of subpoenaing any of these
20 people.

21 So, the hoops that we have had to jump through
22 are of Applicants own creation. But, be that as it may --
23 and also Mr. Carr represented that he was going to move to
24 quash 17 of the 18 of them when we arrived today.

25 So, given that representation we are acting under
somewhat of a handicap now. I have arranged explicitly for

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1 Mr. Sanders and for Mr. Fincher to be available tomorrow.

2 I had hoped Mr. Odom was going to be available
3 tomorrow as well, but that has been rejected.

4 I anticipate that the Sheriff of York County and
5 the Chairman of the York County Council will similarly be
6 present tomorrow.

7 Those are all I expect for the moment, Judge.

8 MR. MC GARRY: Mr. Davis?

9 MR. GUILD: Yes, Mr. Davis' subpoena is returnable
10 likewise tomorrow morning.

11 JUDGE MARGULIES: The hour is late. It is 6:33.
12 We will discuss the submitted proposed contention some other
13 time.

14 It may well be that the Parties will have to
15 submit written submissions in response to the proposed
16 contention. That is something to be considered, and keep
17 the record open pending the resolution of that proposed
18 contention.

19 MR. MC GARRY: One last point.

20 We are now embarking upon the Intervenors'
21 rebuttal. We hope that the Applicant doesn't have to put
22 on a rebuttal case, but we certainly reserve that right.

23 We understand the Board's desire to be finished
24 by Friday. Right now we have no need to put on a rebuttal
25 case. We will keep the Board advised as we go through this.

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JUDGE MARGULIES: Thank you.

The proceeding is recessed until tomorrow at
9:00 a.m.

(Whereupon, at 6:35 p.m., the hearing was recessed
to resume at 9:00 a.m. on Wednesday, 6 June 1984.)

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: Tuesday, June 5, 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

Official Reporter - Typed

Mimie Meltzer
Official Reporter - Signature

Marilynn Nations

Official Reporter - Typed

Marilynn M. Nations
Official Reporter - Signature

Suzanne Young

Official Reporter - Typed

Suzanne Young
Official Reporter - Signature