

254.

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
DOCKETED
USNRC
MAY 21 10:56

In the Matter of)	
)	
DUKE POWER COMPANY, et al.)	Dockets Nos. 50-413
)	50-414
(Catawba Nuclear Station)	
Units 1 and 2))	May 16, 1984

RENEWED APPLICATION BY PALMETTO ALLIANCE
AND CAROLINA ENVIRONMENTAL STUDY GROUP
FOR ISSUANCE OF SUBPOENAS

Pursuant to 10CFR 2.720 Intervenor's, Palmetto Alliance and Carolina Environmental Study Group hereby renew their application of April 16, 1984, and do hereby further apply for the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of evidence in support of Intervenor's claims with regard to the emergency planning contentions which have been admitted for litigation in this proceeding.

Palmetto Alliance and Carolina Environmental Study Group urge that the availability of the right of compulsory process through the issuance of these subpoenas by the Commission is an essential element of administrative due process guaranteed all parties to Commission adjudications and is a procedural tool particularly essential to Palmetto Alliance and Carolina Environmental Study Group in demonstrating, here, the absence of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Catawba Nuclear Station. cf. 10

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CFR 50.47(a)(1). Most of the persons sought to be subpoenaed are either state and local officials or employees or agents of Applicants responsible in their official capacity or employment for emergency preparedness or protective action with respect to radiological accidents at Catawba. In such official capacity or employment, such persons are believed to have knowledge or to be in control of evidence generally relevant to the subject matter of this proceeding, i.e., emergency planning for the Catawba facility. In many cases the emergency preparedness responsibilities of such persons are identified in the emergency plans themselves; in other cases such responsibilities or knowledge are reflected in discovery materials made available by Applicants and in the prefiled or cross-examination testimony of Applicants' witnesses.

Palmetto Alliance and Carolina Environmental Study Group maintain the adequacy of their Application of April 16, 1984, and assert that the Licensing Board erred in refusing that Application. However, in the interest of seeking to mitigate the harm to our case of such error and to contribute to the completeness of the record for decision in this proceeding, we have reduced the number of persons sought to be subpoenaed and have supplemented the previous showing of general relevance of the evidence sought from such persons.

The Commission's Rules of Practice, 10CFR 2.720(a) provide that the presiding officer shall issue such subpoenas on the application of any party. The presiding officer may require a showing of general relevance of the evidence sought, but shall not attempt to determine the admissibility of such evidence. The rule, significantly, contemplates no

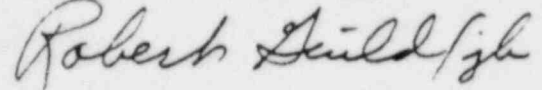
responsive pleading to the application from any other party; nor consideration of any other factors with respect to the issuance of a subpoena. Such traditional considerations as burden, privilege and more narrow relevance determinations may be raised by the person to whom the subpoena is directed by way of a motion to quash or modify the subpoena pursuant to 10CFR 2.720(f). Neither Applicants nor the NRC staff have standing to object to the issuance of the subpoenas sought by Intervenor; any such responses should be stricken. Such procedure is directly analogous to that in the federal courts as provided for in Rule 45(e)(1), FRCP, where subpoenas issue "as a matter of course" upon the request of a party. Moore's, p. 45-82.

Palmetto Alliance and Carolina Environmental Study Group ask that the subpoenas be issued with the date, time, and place of compliance in blank, subject to specification by Intervenor prior to service as the place and time for scheduling becomes known; or, alternatively, with the time and date of 9:00 a.m., June 6, 1984, being set out so that Intervenor may specify a more particularized time for appearance by communication with the witness or counsel. Intervenor are prepared to provide for service and the tendering of fees for attendance as required.

For each person indicated, the subpoena will be accompanied by an attached schedule requiring production of the following documentary evidence:

Any and all documents of whatever description in your custody or subject to your control reflecting your knowledge of emergency preparedness for the Catawba Nuclear Station, particularly including, but not limited to, documents identified by you or your organization, agency, or employer in connection with the pre-hearing discovery requests in the NRC licensing proceeding for the Catawba facility.

Respectfully submitted.

A handwritten signature in cursive script, appearing to read "Robert Guild".

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Carolina Environmental Study
Group

SCHEDULE

PERSONS TO BE SUBPOENAED
BY PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP
MAY 16, 1984

1. Richard W. Riley	Governor of South Carolina
2. James B. Hunt, Jr.	Governor of North Carolina
3. Frank A. Sanders	Director of Public Safety Programs - Office of the Governor of South Carolina
4. P. LaFontaine Odom	Chairman, Mecklenburg County Board of Commissioners
5. J. Jerry Williams	Chairman York County Council
6. Albert Pope	Sheriff, York County
7. Judy Turnipseed	Public Information Officer, South Carolina Governor's Office of Public Safety
8. Luther Fincher	Acting Director, Charlotte-Mecklenburg Emergency Management Office
9. Marilyn Braun	Director of Emergency Planning, Greensboro, NC
10. Dr. Gerald Meisner	Chairman, Civil Defense Citizens Committee, Greensboro, NC
11. Kathy Gordon	Charlotte-Mecklenburg Emergency Management Planning Review Committee
12. Marvin Chernoff	Chernoff-Silver Associates/Metro Mark Surveys
13. Duke Power Company Employee	
14. Randy Austin	Southern Bell Telephone & Telegraph Co.
15. Don G. Hardister	Chief of Security, Heritage, U.S.A.
16. Tom Oliphant	Loss Prevention Operation Manager, Carowinds Theme Park
17. Linda Smith	American Red Cross, York, SC
18. Betty Long	American Red Cross, Mecklenburg County
19. Brenda Best	Teacher, Olympic High School
20. Nat Davis, Jr.	York School District #1

SCHEDULE
PERSONS TO BE SUBPOENAED BY
PALMETTO ALLIANCE AND CAROLINA ENVIRONMENTAL STUDY GROUP
May 16, 1984

1. Richard W. Riley
Governor of South Carolina

Governor Riley's testimony is sought with respect to contentions 8, 14, 15, and 18. Pursuant to Section 25-1-440 Code of Laws of South Carolina (1983), the Governor is authorized to exercise extraordinary emergency powers upon his declaration of a State of Emergency including, inter alia, the control and direction of all state resources including the performance of all state, county, and municipal officers, and the sole power to "direct and compel evacuation of all or part of the populace . . . Id. Such authority rests solely with the Governor or his regular or interim successor and not with county or municipal governments or officials under South Carolina law. Opinion of the Attorney General of South Carolina, September 5, 1980. Intervenors' Exhibit E.P. 21.

Applicants' prefiled testimony on E. P. Contention 8 asserts to the contrary that local officials have the authority to order evacuation. Lunsford p. 8, while acknowledging the Governor's responsibility to declare a State of Emergency, Lunsford p.6, and direct establishment of the State and Forward Emergency Operations Centers. No mention is made of the Governor's role in ordering protective action including evacuation. Intervenors seek to prove through the testimony of Governor

Riley that, as alleged, effective protective action cannot be taken in a radiological emergency because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities that Applicants have seriously underestimated the time required to evacuate the public including the transportation of those without private vehicles and that the public telephone system is inadequate to support necessary emergency communications. The testimony of the Governor is therefore necessary, relevant and unavailable from a lesser ranking officer. *Halderman vs. Pennhurst State School and Hospital*. 96 F.R.D. 60 (F.D.P.A. 1982). Notwithstanding his rank and the importance of his executive duties the testimony of the Governor is subject to the process of a federal proceeding such as this for the protection and relief of private citizens; subject, of course, to provisions to minimize to the extent possible inconvenience and conflicts. *Hadnott vs. Amos*. 291 F. Supp. 309 (M.D. Ala. 1968).

2. James B. Hunt

Governor of North Carolina

Governor Hunt's testimony is sought with respect to Contentions 8, 14, 15, and 18. Pursuant to North Carolina General Statutes 166A, et seq., the North Carolina Emergency Management Act of 1977, the Governor is vested with authority to direct and control the North Carolina Emergency Management Program. Section 166A-5(1), and, upon his proclamation of a State of Disaster and with the concurrence of the Council of State, "to direct and compel the evacuation of all or part of the population. . ." Section 166A-6(c).

It appears that the Governor of the State of North Carolina could not rely upon the determination of the Governor of South Carolina as to the declaration of a state of disaster or emergency but that he must reach such declaration independently, notwithstanding the origination of such hazard at the Catawba Nuclear Station in South Carolina. See Attorney General's Opinion, "Delegation of Governor's Authority," November 9, 1981.

Applicants' Prefiled Testimony on E. P. Contention 8 asserts that local officials have the authority to order evacuation. Pugh and Harris p. 5. despite the acknowledgement that the Governor's exercise of such authority must be preceded by a declaration of disaster and consultation with the Council of State. Pugh and Harris. p. 6. Such actions "would not cause a serious delay since the Governor will be continuously updated and advised on the situation and would normally be available to make the decision to cause the proclamation to be issued." Id. Intervenor's seek to prove through the testimony of Governor Hunt that, as alleged, effective protective action cannot be taken in a radiological emergency because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities, that Applicants have seriously underestimated the time required to evacuate the public including the transportation of those without private vehicles and that the public telephone system is inadequate to support necessary emergency communications. The testimony of the Governor is therefore necessary, relevant and unavailable from a lesser ranking officer. Halderman vs. Pennhurst State School and Hospital. 96 F.R.D. 60 (E.D.P.A. 1982).

Notwithstanding his rank and the importance of his executive duties the testimony of the Governor is subject to the process of a federal proceeding such as this for the protection and relief of private citizens; subject, of course, to provisions to minimize to the extent possible inconvenience and conflicts. *Hadnott vs. Amos*, 291 F. Supp. 309 (M.D. Ala. 1968).

3. Frank A. Sanders

Director of Public Safety Programs

Office of the Governor of South Carolina

Mr. Sanders' testimony is sought with respect to Contentions 1, 7, 8, 14, 15 and 18. As Director of Public Safety Programs in the South Carolina Governor's office, he is identified by Mr. Paul Lunsford as the Governor's representative on the South Carolina Executive Team. Applicants' Prefiled Testimony E. P. Contention 8, Lunsford, p. 6, and as the state official responsible for public information and education for radiological emergency response. Lunsford testimony, cross-examination 5/2/84. (Intervenors are unable to cite specific transcript references for testimony during the May 1 hearings since they are unable to purchase a transcript and the local Public Document Room in Rock Hill has not received transcripts from the Commission since December 1, 1983. References are supplied from notes of counsel.) Intervenors seek to prove through the testimony of Mr. Sanders that, as alleged, effective protective action cannot be taken in a radiological emergency where the public information and education program has failed to effectively inform people about how they will be notified of an

accident and what initial response should be; because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles; and, where the public telephone system is inadequate to support necessary emergency communications.

4. La Fontine Odom

Chairman, Mecklenburg

County Board of Commissioners

Chairman Odom's testimony is sought with respect to Contentions 8, 11, 14, 15, and 18. As Chairman of the Mecklenburg County Board of Commissioners, Mr. Odom is the local official charged with responsibility for activating the siren and EBS system for Mecklenburg and Gaston counties, and for ordering protective action including evacuation of Mecklenburg County and the City of Charlotte during the initial seven hours of an emergency until the State Emergency Response Team (SERT) is on site in Charlotte. Applicants prefiled testimony, Puah and Harris, p. 5; testimony of Phillips on cross examination. Chairman Odom exercises overall direction and control of emergency response for Charlotte-Mecklenburg County. NC Plan Part 1, page 24, Part 3 pages 3 and 13, and Part 3, Figure 1. Intervenors seek to prove through the testimony of Mr. Odom that, as alleged, effective

protective action cannot be taken in a radiological emergency where the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be; because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles; where the public telephone system is inadequate to support necessary emergency communications; and where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

5. J. Jerry Williams
Chairman
York County Council

The Chairman of York County Council's testimony is sought with respect to Contentions 8, 14, 15, and 18. As chairman of County Council, Mr. Williams is the senior local official responsible for protective action prior to the establishment of the state response authority including ordering evacuation. Applicants' Prefiled Testimony, Lunsford 1 p. 6, York County EOP Section VI, p. vii. Intervenors seek to prove through the testimony of Mr. Williams that, as alleged, effective protective action cannot be taken in a radiological emergency because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have

seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles, and, where the public telephone system is inadequate to support necessary emergency communications.

6. Albert Pope

Sheriff, York County

Sheriff Pope's testimony is sought with respect to contentions 8, 14, 15 and 18. As Sheriff, he is charged with responsibility for maintaining the county warning point, York County EOP Part IV B 5, p. 9, traffic control during evacuation and coordinating all law enforcement resources available during an emergency. Id. IV B7. Intervenors seek to prove through the testimony of Sheriff Pope that, as alleged, effective protective action cannot be taken in a radiological emergency because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have seriously underestimated the time required to evacuate the public; including the transportation of those without private vehicles, and, where the public telephone system is inadequate to support necessary emergency communications.

7. Judy Turnipseed

Public Information Office

South Carolina Governor's Office
of Public Safety Programs

Intervenors seek Ms. Turnipseed's testimony with respect to Contentions 1, 7, 8, 14, 15, and 18. Ms. Turnipseed is identified by Applicants' witness Paul Lunsford as the key contact for public information and education in the state government for radiological emergency response. Lunsford testimony, cross examination 5/2/84. Intervenors seek to prove through the testimony of Ms. Turnipseed that as alleged, effective protective action cannot be taken in a radiological emergency where the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be; because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles, and, where the public telephone system is inadequate to support necessary emergency communications; where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

8. Luther Fincher

Acting Director

Charlotte-Mecklenburg County

Emergency Management Office

Mr. Fincher's testimony is sought with respect to Contentions 1, 7, 8, 11, 14, 15, and 18. As Acting Director of the Charlotte-Mecklenburg EMO, Mr. Fincher supervises the Administrative Officer, Wayne Broome, and is in charge of planning, organizing and coordinating emergency

response for the County and City. NC Plan. Part 3. II E. p. 2.

Intervenors seek to prove through the testimony of Mr. Fincher that as alleged, effective protective action cannot be taken in a radiological emergency where the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be; because of conflict, confusion and lack of coordination among those officials and agencies with primary and supporting responsibilities; where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles, and, where the public telephone system is inadequate to support necessary emergency communications; where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

9. Marilyn Braun

Director - Greensboro-Guilford County
Emergency Management Assistance Agency

Ms. Braun's testimony is sought with respect to Contention 11. Ms. Braun has reviewed a number of emergency response plans including the present All Hazards Plan for the City of Charlotte, and has presented testimony before the Charlotte-Mecklenburg Emergency Management Planning Review Committee. Intervenors seek to prove through the testimony of Ms. Braun that as alleged, effective protective action cannot be taken in a radiological emergency where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

10. Dr. Gerald Meisner

Chairman, Citizens' Advisory Committee
Greensboro-Guilford County
Emergency Management Assistance Agency

Dr. Meisner is a professor of physics at the University of North Carolina at Greensboro. His testimony is sought with respect to Contention 11. Dr. Meisner has chaired a citizens' advisory committee which has enhanced emergency planning for a number of hazards. Intervenors would seek to prove from Dr. Meisner's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

11. Kathy Gordon

Member, Charlotte-Mecklenburg
Emergency Management Planning
Review Committee

Ms. Gordon's testimony is sought with respect to Contention 11. She and the Committee were charged by the Mecklenburg County Commission with reviewing the adequacy of current emergency planning for the City and County particularly with respect to the adequacy of the existing EPZ for Catawba. Intervenors seek to prove through Ms. Gordon's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

12. Marvin Chernoff

Chernoff/Silver & Associates

Mr. Chernoff's testimony is sought with respect to Contentions 1 and 7. His firm of public relations consultants assisted Applicants in the conduct of community issues surveys of persons living in the Catawba EPZ on subjects relating to the effectiveness of Duke's Public Information Program. Intervenors' Exhibits E. P. 9 and 10, for identification. Intervenors seek to prove through Mr. Chernoff's testimony that the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be.

13. Duke Power Company Employee
or Agent with knowledge of
Community Issue Surveys of
Catawba EPZ

This person or persons unknown are sought with regard to Contention 1. As described above under Item 12, Duke's surveys of EPZ residents were conducted by Metro-Mark Market Research, Inc. of Columbia, South Carolina. Intervenors seek to prove through this testimony that as alleged, effective protective action cannot be taken in a radiological emergency because the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be.

14. Randy Austin

Southern Bell Telephone & Telegraph Co.

Mr. Austin's testimony is sought with respect to Contention 11. Mr. Austin has knowledge of the feasibility and effectiveness of automatic telephone systems for use in prompt alert and notification of potential EPZ populations in Charlotte. Intervenors would seek to prove through Mr. Austin's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where the plume EPZ does not extend into the City of Charlotte despite local emergency response needs and capabilities.

15. Don G. Hardister

Chief of Security

Heritage, U.S.A.

Mr. Hardister's testimony is sought with respect to Contentions 9, 14, and 15. Discovery documents reflect Mr. Hardister's involvement with state and local emergency planners in reviewing evacuation plans for Heritage, U.S.A. Intervenors seek to prove through Mr. Hardister's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles.

16. Tom Oliphant

Loss Prevention Operation Manager

Carowinds Theme Park

Mr. Oliphant's testimony is sought with respect to Contentions 2, 4, and 15. Discovery documents reflect Mr. Oliphant's involvement with state and local officials in reviewing plans for the evacuation of Carowinds Theme Park. Intervenors seek to prove through Mr. Oliphant's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where Applicants have seriously underestimated the time required to evacuate the public, including the transportation of those without private vehicles.

17. Linda Smith

American Red Cross

York, South Carolina

Ms. Smith's testimony is sought with respect to Contention 3. Testimony by Dennis Johnson on May 4, 1984, indicates that Ms. Smith was responsible for reviewing the adequacy of shelters in or near York County. Intervenors seek to prove through Ms. Smith's testimony that effective protective action cannot be taken where emergency shelter facilities are inadequate.

18. Betty Long

American Red Cross

Mecklenburg County

Ms. Long's testimony is sought with respect to Contention 3. Testimony by Wayne Broome on May 4, 1984, indicates that Ms. Long was responsible for reviewing the adequacy of shelter facilities in Mecklenburg County. Intervenors seek to prove through Ms. Long's testimony that effective protective action cannot be taken where emergency shelter facilities are inadequate.

19. Brenda Best

Teacher

Olympic High School

Ms. Best's testimony is sought with respect to Contentions 1, 7, 14, and 15. Ms. Best has knowledge of the effectiveness of the exercise conducted of the Catawba Emergency Plan on February 15-16, 1984, particularly as schools, students and teachers are involved. Intervenors seek to prove through Ms. Best's testimony that as alleged, effective protective action cannot be taken in a radiological emergency where the public information and education program has failed to effectively inform people about how they will be notified of an accident and what initial response should be and where Applicants have seriously underestimated the time required to evacuate the public including the transportation of those without private vehicles.

20. Nat Davis, Jr.

York Schools

Mr. Davis' testimony is needed with respect to Contentions 14 and 15. Nat Davis, Jr. is responsible for school bus transportation in the York School System. Discovery documents from Applicants reflect that Mr. Davis is involved in planning for the evacuation of students in the York School System. Intervenors seek to prove through Mr. Davis' testimony that as alleged, effective protective action cannot be taken in a radiological emergency where Applicants have seriously underestimated the time required to evacuate the public including the transportation of those without private vehicles.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Renewed Application by Palmetto Alliance and Carolina Environmental Study Group for Issuance of Subpoenas" in the above-captioned matter have been served upon the following by deposit in the United States mail this 16th day of May 1984.

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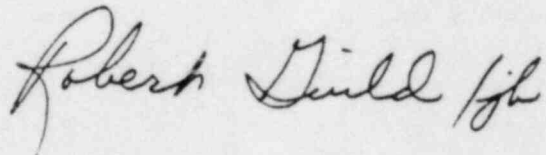
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Respectfully submitted.

A handwritten signature in cursive script that reads "Robert Guild" followed by a stylized monogram "fjh".

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