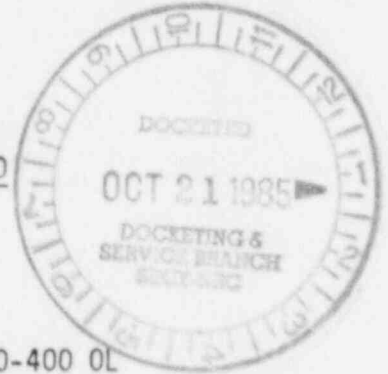


844
October 15, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

CAROLINA POWER AND LIGHT COMPANY AND
NORTH CAROLINA EASTERN MUNICIPAL
POWER AGENCY

(Shearon Harris Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-400 OL
50-401 OL

NRC STAFF RESPONSE TO INTERVENOR WELLS EDDLEMAN'S
PROPOSED CONTENTIONS BASED ON THE EMERGENCY PLANNING EXERCISE

I. INTRODUCTION

On September 30, 1985, Intervenor Wells Eddleman filed twelve late-filed contentions based on information he has received concerning the emergency planning exercise for the Shearon Harris Nuclear Power Plant. "Contentions Based on Emergency Planning Exercise" [hereinafter Contentions]. For the reasons set forth below, the Staff opposes the admission of all of Intervenor Eddleman's proffered contentions.

II. BACKGROUND

On May 17-18, 1985, a full participation emergency planning exercise was held at the Shearon Harris facility. This exercise involved the Applicant and State and local governments. The off-site portion of the exercise was evaluated by federal observers from the Federal Emergency Management Agency (FEMA). On August 7, 1985, FEMA issued its report evaluating the exercise. FEMA found no deficiencies were identified during the exercise which would cause a finding that offsite emergency preparedness

8510220231 851015
PDR ADOCK 05000400
G PDR

DS07

was not adequate to provide reasonable assurance that appropriate protective measures can and will be taken to protect the health and safety of the public living in the vicinity of the site in the event of a radiological emergency. Memorandum from Richard W. Krimm to Edward L. Jordan, Subject: Interim Findings on Offsite Radiological Emergency Response (RER) Plans and Preparedness for the Shearon Harris Nuclear Power Station (August 7, 1985). In its report FEMA identified five NUREG-0654 deficiencies requiring a schedule of corrective actions. Id. However, FEMA noted that these deficiencies did not detract from the overall capability demonstrated by the State of North Carolina and the four counties involved to protect the health and safety of the public in the event of a radiological emergency. Id. Based on its evaluation of the exercise and its review of the State and County emergency plans, FEMA has concluded as its interim finding that:

"[t]he State and local emergency plans are adequate and capable of being implemented, and the exercise demonstrated that offsite preparedness is adequate to provide reasonable assurance that appropriate measures can be taken to protect the health and safety of the public living in the vicinity of the Shearon Harris Nuclear Power Station in the event of a radiological emergency."

Id. at 2.

The State of North Carolina also performed an internal evaluation of the exercise. The results of this evaluation were contained in a report which was provided to Mr. Eddleman. The State also apparently provided Mr. Eddleman with the message log which recorded the messages sent and received by the State during the exercise. Based on this information Mr. Eddleman has proposed twelve new contentions. For the reasons set forth below, the Staff opposes the admission of all of these proffered contentions.

III. ARGUMENT

A. NRC Standards Applicable To Proffered Contentions

In order for Intervenor's proffered contentions relating to the emergency planning exercise to be admitted as matters in controversy in this proceeding, they must satisfy two standards. First, each contention must satisfy the Commission's requirement that the basis for the contention be set forth with reasonable specificity. 10 C.F.R. § 2.714(b). Second, since they are late filed contentions, under the Commission's decision in Duke Power Company et al (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983), balancing of the five factors of 10 C.F.R. § 2.714(a) must favor admission of the contentions.

In order for proposed contentions to be found admissible, they must fall within the scope of the issues set forth in the Notice of Hearing initiating the Proceeding,^{1/} and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973). Under 10 C.F.R.

^{1/} Public Service Co. of Indiana Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976). See also, Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290, n.6 (1979).

§ 2.714(b) a petitioner for intervention in a Commission licensing proceeding must file a supplement to its petition:

. . . [w]hich must include a list of the contentions which petitioner seeks to have litigated in the matter, and basis for each contention set forth with reasonable specificity.

The purpose of the basis requirements of 10 C.F.R. § 2.714 are (1) to assure that the contention in question raises a matter appropriate for litigation in a particular proceeding, ^{2/} (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion and, (3) to put the other parties sufficiently on notice ". . . so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of basis, it is unnecessary for the petition to detail the evidence which will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1

^{2/} A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board should not reach the merits of the contentions. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980); Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, at 20; Grand Gulf, supra at 426.

As the Appeal Board instructed in Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216-217 (1974), in assessing the acceptability of a contention as a basis for granting intervention:

[T]he intervention board's task is to determine, from a scrutiny of what appears within the four corners of the contention as stated, whether (1) the requisite specificity exists; (2) there has been an adequate delineation of the basis for the contention; and (3) the issue sought to be raised is cognizable in an individual licensing proceeding. (Footnotes omitted)

This applies equally to a contention proffered by an intervenor as well as by a petitioner to intervene. If a contention meets these criteria, the contention provides a foundation for admission "irrespective of whether resort to extrinsic evidence might establish the contention to be insubstantial." ^{3/} The question of the contention's substance is for

^{3/} Farley, supra, at 217. In addition, the proposed contention should refer to and address relevant documentation, available in the public domain, which is relevant to the Harris plant and the proffered contention. See, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-184 (1981).

later resolution - either by way of 10 C.F.R. § 2.749 summary disposition prior to the evidentiary hearing ... or in the initial decision following the conclusion of such a hearing." Farley, supra, 7 AEC at 217. Thus, it is incumbent upon Intervenor Eddleman to set forth contentions and bases therefore which are sufficiently detailed and specific to demonstrate that the issues they purport to raise are admissible.

On June 30, 1983 the Commission reviewing ALAB-687, 16 NRC 460 (1982) issued its decision in Duke Power Company et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). This decision considered the standards to be applied to contentions premised upon information contained in licensing-related documents not required to be prepared early enough so as to enable an intervenor to frame contentions in a timely manner in accord with the provisions of 10 C.F.R. § 2.714(b). In Catawba the Commission determined that it is reasonable to apply the late-filing criteria in 10 C.F.R. § 2.714(a)(1) and the Appeal Board's three-part test for good cause ^{4/} to contentions that are filed late because they depend solely on information contained in institutionally unavailable licensing-related documents. ^{5/} Id. at 1045. Further,

^{4/} 17 NRC 1045. See also ALAB-687, 16 NRC 460, 469 (1982).

^{5/} The Commission believes that the five factors together are permitted by Section 189a of the Act and are reasonable procedural requirements for determining whether to admit contentions that are filed late because they rely solely on information contained in licensing-related documents that were not required to be prepared or submitted early enough to provide a basis for the timely formulation of contentions. Id. at 1045, 1050.

the Commission determined that the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was otherwise available early enough to provide the basis for timely filing of that contention. ^{6/} Id. at 1048.

The factors which must be balanced in judging the admissibility of a late-filed contention are:

- (i) Good cause, if any for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1). With respect to the good cause factor the Commission adopted the Appeal Board's test to determine whether good cause exists for late filing of a Contention. Catawba, supra, 17 NRC at 1045. Under that test good cause exists if a contention: 1) is wholly dependent upon the content of a particular document; 2) could not therefore be advanced with any degree of specificity (if at all) in advance of the public availability of that document; and 3) is tendered with the requisite degree of promptness once the document comes into existence and

^{6/} The Commission set out in its decision the fundamental principles upon which it bases its conclusion that Intervenor's are required diligently to uncover and apply all publicly available information to the prompt formulation of contentions. Id. at 1048-1050.

is accessible for public examination. Id. at 1043-1044. The Appeal Board has recently discussed the showing necessary to cause the third factor to weigh in favor of the admission of a late petitioner for leave to intervene. Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 3) ALAB-747, 18 NRC, 1167 (1983). In WPPSS the Appeal Board reasserted a standard it had set forth in Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). As the Appeal Board stated:

Almost a year ago, we observed that, because of the importance of the third factor, "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.

WPPSS, supra, 18 NRC at 1177. This standard is instructive in determining whether an intervenor has satisfied the third factor with respect to a late-filed contention.

B. The Five Factors

The first factor which must be addressed is whether Intervenor Eddleman had good cause for filing his contentions late. For most of his new contentions he alleges that he received the State's evaluation document after September 1, 1985. Contentions at 1. In light of the fact that he filed his contentions within 30 days of the availability of this information, Intervenor would appear to have good cause for filing those contentions which relied on the State's documents late. However, the existence of good cause for the late filing of those contentions based on the FEMA exercise report is not so clear. Intervenor alleges

that he received the FEMA report on August 30, 1985. However, the report was made available to a person who had filed a Freedom of Information Act request on his behalf by letter dated August 7, 1985. Letter from Richard W. Krimm to Nina Bell. Therefore, the information was publicly available for a period of more than 30 days before Intervenor Eddleman filed Contentions EPX-6, EPX-7 and EPX-8. Intervenor lacks good cause for the late filing of these contentions.

The second and fourth factors should be balanced in favor of the admission of these contentions. There is no other party who has raised such issues in this proceeding, and there is no other forum in which Mr. Eddleman could protect his interests.

The third factor weighs heavily against the admission of these contentions. Mr. Eddleman argues that he will be able to call as witnesses the exercise evaluators and those knowledgeable about the exercise. Contentions at 4. However, Mr. Eddleman does not specify the contents of their testimony. In this case, where the FEMA findings constitute a rebuttable presumption, for Mr. Eddleman to show that this factor should be weighed in favor of the admission of his contentions, he would have to demonstrate how he is going to overcome that rebuttable presumption. As will be discussed below, Mr. Eddleman's contentions are not framed in a way which even contemplates such testimony. Therefore, this factor should weigh against the admission of these contentions.

The fifth factor also should be weighed against the admission of these contentions. As Mr. Eddleman agrees, the admission of these contentions will broaden the issues to be heard in the proceeding. At present only two issues remain for hearing. These issues are scheduled

to be heard in November, 1985. Admission of new contentions at this point would indeed delay the completion of the proceeding, which is the thrust of this factor. The Detroit Edison Company et al. (Enrico Fermi Atomic Power Plant, Unit 2) ALAB-707, 16 NRC 1760, 1766 (1982). Therefore, this factor weighs against the admission of these contentions.

In sum, with respect to those contentions relating to the FEMA report, factors 1, 3 and 5 should be weighed against their admission. With respect to the remainder of the contentions, factors 3 and 5 weigh against their admission, and factors 1, 2 and 4 weigh in favor of their admission. However, the factors which weigh against their admission should be viewed as controlling. Therefore, a balancing of the five factors should result in the denial of these contentions as untimely under 10 C.F.R § 2.714(a) of the Commission's Regulations.

C. All Of These Contentions Should Be Rejected For Failure To Raise Issues of Regulatory Compliance

Before turning to each of the individual contentions, it is necessary to discuss a general defect shared by all of the contentions. None of these contentions alleges that the standards of 10 C.F.R. § 50.47(b) of the Commission's regulations have not been satisfied. It is based on these regulations that the adequacy of the plans and their capability to be implemented are judged. These standards are discussed individually in NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." (November, 1980). The Board is limited in its consideration of the adequacy of emergency planning and preparedness to determining whether these regulations are met. Duke Power Company, et al.

(Catawba Nuclear Station, Units 1 and 2) LBP-84-37, 20 NRC 933, 940 (1984). Without an allegation of regulatory noncompliance, the parties are not put on notice of what is to be litigated as required by Peach Bottom, supra.

In addition, if the issues raised by Intervenor Eddleman are more closely related to areas of improvement than to a fundamental weakness in planning or preparedness as would be shown by a failure to meet the regulations, then they are not an appropriate subject for a hearing.^{7/} If what Intervenor wishes to litigate is something which would be over and above what is required by the regulations, that would not be an appropriate subject for a hearing. As the contentions are framed, they do not set forth with enough detail to inform the parties as to what is to be litigated in this proceeding. Even if all of the problems listed in the contentions do exist, Mr. Eddleman still has not alleged either that the Commission's regulations are not met, or that FEMA's Findings are incorrect. Such allegations are necessary to overcome the rebuttable presumption status granted to FEMA Findings in the Commission's Regulations. 10 C.F.R. § 50.47(a)(2). As far as the contentions relating to the observations of State evaluators are concerned, it should be noted that they are actually couched in terms of areas where improvement could be achieved rather than as inadequacies in

^{7/} The Court in *UCS v. NRC*, 735 F.2d 1437, 1448 (D.C. Cir. 1984), recognized the potential for the Commission to reject contentions pertaining to the exercise if they did not raise fundamental flaws in the emergency preparedness plan but only raised minor or ad hoc problems occurring on the exercise day. It is clear from reading both the State and FEMA documents that the deficiencies alleged by Intervenor in his contentions are not considered to be significant deficiencies.

either planning or preparedness. "Evaluation Report Shearon Harris Nuclear Power Plant Exercise" at 3, 5 [hereinafter State Report]. Since no regulatory violations have been alleged, and no attempt has been made to raise issues as to the correctness of FEMA's findings in any of the areas raised by the contentions, they should be rejected.

D. Individual Contentions

Contention EPX-1

Contention EPX-1 alleges that timely notification of radiation releases is not assured. Contentions at 2. The basis for this contention is found in the State's internal evaluation of the exercise. The State noted this matter as an area needing attention. FEMA did not find any significant deficiencies in this area. See, "Shearon Harris Station Exercise" at 31 [hereinafter FEMA Report]. It should be noted that, while the State noted the existence of this problem, it found the performance of the State agencies involved to be excellent. State Report at 6. It is unclear what violation of the regulations is sought to be litigated, and thus the contention should be rejected.

Contention EPX-2

Contention EPX-2 alleges that communication deficiencies identified in the exercise "could have severe bad effects" in the event of an actual emergency. Contentions at 2. The basis provided refers first to a State evaluator's comment which pertained to the attempts by a helicopter to communicate with ground units. The evaluator pointed out that this was

due to the exercise using the same frequency as is ordinarily used by local police and Rescue Squads. State Report at 14. FEMA did not find any significant deficiencies in this area. Rather, the general area of emergency communications was listed as an area for improvement. FEMA Report at 31. FEMA did not find that deficiencies in this general area affected the ability of State and Local governments to protect the health and safety of the public. Since this contention does not allege any violation of the Commission's Regulations and does not challenge the FEMA Findings in this area, it should be rejected.

With respect to the second basis for this contention, it should be noted that the highway patrol evaluator called the communication problems he found to exist the "usual" problems. He also pointed out that the equipment is slowly being upgraded. State Report at 8. FEMA did not find any significant deficiencies in this area. Therefore, while Intervenor has provided a basis for this contention, the contention does not allege any regulatory violation and does not point out exactly what issue is to be litigated. With respect to Harnett County's lack of telephones, both the State evaluator and FEMA noted that the Harnett county personnel functioned adequately despite the inadequacy of the facilities. FEMA found this an area which requires corrective actions, but also found that the ability of Harnett County to protect the public health and safety of its citizens was not impaired by the inadequate facilities. FEMA Report at 24. It should be noted that the concern about extra radio traffic overloading personnel raised by the evaluator of Chatham County in the State's evaluation and repeated in this contention applied only to the initial stages of the exercise. State Report

at 4. This contention, despite its listed bases, is subject to the fatal defect of the failure to state a regulatory violation which could be litigated in this proceeding.

Contention EPX-3

Contention EPX-3 alleges that CP&L onsite medical personnel lacked certain equipment such as appropriate splints, and that they did not demonstrate an ability to maintain a high level of patient care and to prevent contamination of themselves and of the environment. Contentions at 3. It should be noted that the State evaluator who provided the basis for this contention noted that the medical team's performance was generally adequate. State Report at 3. The NRC did not find any significant deficiencies in this area. Inspection Report 85-20 (June 5, 1985). Without further specification of the regulatory violation or the error in the NRC findings which is to be litigated, this contention must be rejected.

Contention EPX-4

Contention EPX-4 alleges that Lee County's decontamination training and practices are inadequate. Contentions at 3. As basis for this contention Intervenor cites excerpts from the State's internal evaluation of the exercise. The Contention as framed is too broad. An examination of the State and FEMA reports indicates that the comments of the Lee County evaluator referred to a group performing vehicle decontamination rather than those performing decontamination at the Lee County reception centers. State Report at 5; FEMA report at 22-24. Therefore, the basis cited does not support this broad contention.

In addition, FEMA did not find the possible need for more training of some county personnel in vehicle decontamination to constitute a significant deficiency requiring correction before FEMA could make its reasonable assurance finding. The Contention does not allege any regulatory violation due to the perceived need for training, and it does not allege any error in FEMA's findings in this area. Therefore, the contention should also be rejected on the ground that it fails to specify the issue which is to be litigated.

Contention EPX-5

This contention alleges that siren activation is inadequate and that there is no reliable means for Wake County personnel to determine that the sirens have been activated. Contentions at 3. As basis for this contention Intervenor cites to the State's internal evaluation and to certain messages generated during the exercise. A review of the documents cited by Intervenor indicates that, in fact, there was confirmation that the sirens were activated in all four counties. Message 205. It is not clear to the Staff that the cited messages indicate either a substantial delay in siren activation in all counties or confusion concerning whether they were activated.

It should be noted that FEMA did not identify a significant deficiency in the area of activation of the sirens. The only delay in siren activation is noted in FEMA's summary of the exercise for Wake County. FEMA report at 3. FEMA noted that the delay seemed to be due to a lack of aggressiveness in managing the situation and noted an improvement in management on the second day of the exercise. Id. FEMA

did not find a significant deficiency in this area. The contention does not allege any violations of the Commission's regulations nor does it challenge FEMA's findings regarding the activation of the sirens during the exercise. Therefore, the contention does not raise a specific issue to be litigated and should be rejected.

Contention EPX-6

This contention alleges that management and coordination of rumor control were inadequate, especially concerning the announcement to the public of the precautionary evacuation of the Harris Lake and in the announcement of the general emergency to the public. Contentions at 3. The cited basis for this contention is FEMA's exercise evaluation. While FEMA noted some deficiencies in the area of rumor control and dissemination of information to the public, they did not find that these deficiencies impaired the capability of the State and Counties to protect the health and safety of their citizens. Fema Report at 11-13; Krimm Memorandum at 1. Since the contention does not question the correctness of this FEMA finding, it should be rejected.

Contention EPX-7

Contention EPX-7 alleges that there were delays in the communication of dose assessments to State emergency response personnel, and that coordinates of traffic control points were not tabulated to allow more rapid calculation of stay times for those points. The contention alleges that such deficiencies must be remedied to protect the health and safety of the public. Contentions at 4. The cited basis for this contention is

FEMA's exercise evaluation. FEMA's evaluation does note a deficiency in the area of timely provision of dose assessments to the SERT. FEMA goes on to note that the deficiency appears to be one of training rather than of equipment. FEMA Report at 9. FEMA did not find, however, that this deficiency prevented State officials from protecting the health and safety of the public.

As far as the tabulation of traffic control point coordinates is concerned, FEMA noted that the lack of tabulation caused unnecessary, but brief, delays in calculation of stay times. They listed this as an area for improvement rather than as a deficiency. Id. Intervenor does not provide any basis in his contention which would show even the possible existence of facts to overcome FEMA's finding, if that is what Intervenor is attempting to litigate. Therefore, the contention is vague and lacks basis and should be rejected.

Contention EPX-8

This contention alleges that the use of the EBS system was incomplete and ineffectively managed. Contentions at 4. The cited basis for the contention is FEMA's evaluation of the exercise. In its report FEMA indicated that the procedures for the use of the EBS system "need attention." FEMA report at 12. However, FEMA did not find the problems with the use of the EBS system to impair the capability of the State and Local governments to protect the health and safety of the public. If Intervenor Eddleman is contesting the correctness of this FEMA finding, he has not provided any basis for such an allegation. In fact, the contention does not specifically allege that FEMA is incorrect

in its view of the situation. Therefore, this contention should be rejected.

Contention EPX-9

This contention alleges that field survey teams have "a weak level of training in the use of anticontamination clothing and/or respirators." Contentions at 4. The cited basis for the contention is the State's internal evaluation. This contention as framed appears to be too broad. The evaluator stated that some members of the field survey team acknowledged some lack of training in these areas. State Report at 12. The evaluator stated, however, that the field survey teams were competent and performed their duties according to procedures. Id . FEMA did not find any significant deficiencies in the activities of the field survey teams. FEMA Report at 8. No basis is provided in the contention, other than the mere allegation that this problem must be remedied to protect the health and safety of the public, to contest FEMA's determinations in this area. Therefore, this contention should be rejected.

Contention EPX-10

This contention alleges that protection of emergency workers and the public from radioactive iodine cannot be assured due to deficiencies in low volume air samplers, and to deficiencies in the distribution of and notification of the time to use potassium iodide. Contentions at 4-5. The basis for this contention is cited as the State's internal evaluation. The State evaluator noted that low volume air samplers could be improved in order to ensure confidence in the equipment during deployment. State

Report at 12. FEMA noted that radiation monitoring teams should receive additional training in the use of low volume air samplers. FEMA report at 15. However, FEMA concluded that team members were adequately trained. Id. FEMA did not note the need for additional training as a deficiency which would impair the ability to protect the health and safety of the public.

There is no alleged basis for the contention of deficiencies in the distribution of potassium iodide. FEMA did not find any significant deficiencies in the area of notification of workers of when to use potassium iodide. The contention fails to allege any regulatory violation, and does not provide a basis for contesting FEMA's findings. It should, therefore, be rejected.

Contention EPX-11

This contention alleges that there are numerous deficiencies in the transmission of hard-copy messages. Contentions at 5. The basis for this contention is found in messages generated during the course of the exercise. Id. FEMA discussed the availability or unavailability of hard-copy capability, but did not find that problems with such hard-copy availability would impair the ability of State and local officials to protect the health and safety of the public. The contention does not set forth either an allegation that such difficulties should have been viewed by FEMA as significant, or any basis for challenging the correctness of FEMA's findings. Therefore, the contention lacks basis and specificity and should be rejected.

Contention EPX-12

This contention alleges that emergency assistance should be upgraded to assure the evacuation of people fishing, boating and camping near the Cape Fear River. The basis for this contention is a message from Harnett County to the Wildlife Department for assistance in alerting and evacuating people in the area of the Cape Fear River. Message 162; Contentions at 5. Neither the State nor FEMA evaluators noted a deficiency in the evacuation of this area. This message does not provide a basis for a general contention that emergency assistance in this area must be upgraded. No regulatory violation is alleged, and there is no allegation that any FEMA finding is erroneous. Therefore, this contention lacks basis and specificity and should be rejected.

IV. CONCLUSION

For the reasons set forth above, proffered contentions EPX-1 through EPX-12 should be rejected.

Respectfully submitted,



Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of October, 1985

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket Nos. 50-400 OL
50-401 OL

Spence W. Perry, Esq.
Associate General Counsel
Office of General Counsel
FEMA
500 C Street, SW Rm 840
Washington, DC 20472

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert P. Gruber
Executive Director
Public Staff - NCUC
P.O. Box 991
Raleigh, NC 27602

Wells Eddleman
806 Parker Street
Durham, NC 27701

Richard E. Jones, Esq.
Associate General Counsel
Carolina Power & Light Company
P.O. Box 1551
Raleigh, NC 27602

H.A. Cole, Jr., Esq.
Special Deputy Attorney General
Antitrust Division
Office of Attorney General
200 New Bern Avenue
Raleigh, NC 27601

Bradley W. Jones, Esq.
Regional Counsel, USNRC, Region II
101 Marietta St., N.W. Suite 2900
Atlanta, GA 30323

George Trowbridge, Esq.
Thomas A. Baxter, Esq.
John H. O'Neill, Jr., Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, DC 20036

Atomic Safety and Licensing Board*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Harry Foreman, Alternate
Administrative Judge
P.O. Box 395 Mayo
University of Minnesota
Minneapolis, MN 55455



Janice E. Moore
Counsel for NRC Staff