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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

October 28, 1985

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Glenn O. Bright  
Dr. James H. Carpenter  
James L. Kelley, Chairman



In the Matter of

CAROLINA POWER AND LIGHT CO. et al.  
(Shearon Harris Nuclear Power Plant,  
Unit 1)

Docket 50-400 OL

ASLBP No. 82-468-01  
OL

Wells Eddleman's Reply on Emergency Planning Exercise  
(EPX) contentions

On 10-15-85 Staff and Applicants filed responses to the proposed EPX contentions. Per oral order of the Board, Wells Eddleman now replies to those responses, as follows:

The Staff position is illogical. They state (Staff response, hereinafter "Staff", p.11) that I have not alleged that FEMA's findings are incorrect. They then say for virtually every contention that FEMA (or NRC Staff) did not consider the cited problems major, or significant deficiencies. By asserting these contentions, I am actually rebutting FEMA's claims and "findings" in 12 areas.

My basic point is that the facts showing problems with training, notification, emergency broadcast, radiation monitoring, communications, etc, rebut FEMA's findings. It doesn't matter how the State or FEMA characterize them, whether they use certain "magic words", because the adequacy of the plan is a matter of law for the Board to decide.

The same is true of what is a "fundamental flaw" (not that the court imposed such a standard: see below). The significance of the flaws rests on the facts, not on FEMA's or the State's characterization of them

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It is the facts about the problems that are relevant as basis for these contentions. The Staff (p.11) and Applicants (Response, hereinafter "Applicants", p.12) misinterpret the Union of Concerned Scientists case (735 F 2d 1437, D.C. Circuit, 1984). The Court only said the Commission was free to adopt a "fundamentally flawed" requirement -- not that the Commission had adopted such a standard. Neither Staff nor Applicants appear to have cited anything showing the Commission has. What the Court distinguished from "fundamentally flawed" however, was "minor or ad hoc problems occurring on the exercise day". (735 F2d at 1147-48 as quoted in Applicants, p.12).

If Staff or Applicants wish to apply this standard, they have to show the problems are minor or ad hoc. This they have not done. Indeed, only as to EPX-11 does the Applicants' response even attempt to show a problem was ad hoc (Applicants at 27-28). There is no definition of what is a "minor" problem, and apparently no detail on this in the UCS opinion (735 F2d 1437, supra). This is logical since the UCS challenged NRC's unwillingness to allow any litigation of emergency planning exercise problems, and the main issue was whether NRC should be reversed (which it was), not the exact scope of contentions to be allowed.

However, it is clear that an emergency response is fundamentally flawed when a major part of it fails or has significant problems. EPX-1 alleges failure to notify of a radiation release for a time

longer than the prompt notification time required; EPX-2 alleges widespread communications inadequacies; EPX-3, inadequate equipment and ability to provide a high level of care to injured contaminated persons; EPX-4, use of untrained decontaminators; EPX-5, delays of about 40 minutes in siren activation, sirens not sounding, no method of assuring that sirens have been activated (NB this is different from saying people didn't hear the sirens); EPX-6, inadequate rumor control

and failure to announce a general emergency and an early evacuation of a lake near the plant, both of which could cause panic -- there is a specific requirement for rumor control in NUREG-0654, II.J. & II.FX see, e.g. at 63-64, etc; EPX-7, failure to promptly communicate radiation dose assessments and data files, failing to rapidly compute allowable "stay times" at traffic control points (obviously vital to good traffic control which is vital to evacuation); EPX-8, incomplete, ineffectively managed <sup>E</sup>mergency <sup>B</sup>roadcast System use, with numerous inadequacies; EPX-9, weak training of radiation survey teams in use of anticontamination clothing and/or respirators; EPX-10, deficient calibration of low-volume radionuclide air samplers and inadequate measures to protect <sup>emergency</sup> workers from <sup>radio-</sup>iodine exposure; EPX-11, numerous deficiencies in hard-copy data transmission; EPX-12, inadequate ability to assist and evacuate people along the Cape Fear River in Zone 'H'.

All these are serious. Allegations that these problems can be fixed go to the merits (as do the vast majority of Applicants' specific comments on the contentions, Applicants at 14-29) and are not proper reasons for not admitting a contention.

The Staff argues there is no allegation of regulatory noncompliance (Staff at 10-11); however, a logical linkage is also adequate basis for alleging noncompliance with applicable standards. It is clear that inadequate communications, training, etc. etc. as shown in contentions EPX 1 thru 12 and their bases do not comply with reasonable assurance that adequate protective measures can and will be taken in an emergency. In fact, given that everyone knew when the test was going to happen, the existence of this many deficiencies clearly indicates that if an accident came (as it almost surely would) without long advance warning, e.g. weeks or months notice being long advance

warning, accidents arising usually within hours, then more problems would be likely, since there would be less preparedness. Moreover, the cited sections of the evaluations show what areas are found to have problems based on the facts shown therein.

The contentions are in fact highly specific to sections of the State of NC evaluation and FEMA "interim findings". Applicants fault me (Apps Fn 6, pp 8-9) for not supplying the basis documents of the contentions, but in fact I presented these contentions at a hearing where Applicants, Staff and the Board were present, and I had with me then the State evaluation (the main basis document not cited with extra specificity, since State message logs were cited by message numbers). I do not recall the Applicants asking for a copy of the information. I would have supplied it for copying if they had requested it.

As to the Staff's arguments on the individual contentions, Staff at 12-20, they seem to assume that FEMAS conclusions cannot be challenged based on facts in either FEMA's or the State's evaluation, (false), and that if FEMA doesn't declare something to preclude adequate protective measures being taken, then that FEMA statement is an un rebuttable presumption (contrary to the rules, which say it is a rebuttable presumption). Their other arguments go to the merits, mostly, and appear to say that I have to have already rebutted FEMA's findings conclusively in order to get a contention admitted. Where there are facts (as shown in the bases of EPX - thru 12) to provide basis for contentions rebutting FEMA's findings, or lack thereof, that is sufficient to admit the contentions.

Staff also alleges that the FEMA-report-based contentions are late since FEMA allegedly made its report available under FOIA on August 7. I have no knowledge of this, and received some FOIA documents from  
(with the words "I just got this in")  
Nina Bell on 8/28 or /29, 1985, which under the 30 day rule would still make the filing deadline September 30 . I should not be

penalized for making extra efforts to obtain relevant information on the Emergency Planning Exercise when the information was not in my hands until within 30 days (and a weekend from 8/28-30) of the date of filing the contentions. I would note that I had to move in this period also, not by my choice (my former home is being converted to offices), and I did not use the information I got from Bell, but rather the FEMA interim findings received 8/30 (the day I began moving), as the copy I worked from. The slightly different time that the other ~~informant~~ copy came into my hands makes no difference.

The Staff's further arguments on the 5 factors (Staff at 9,10) are flawed in that the basis documents identify all the State evaluators by name, and it is their factual testimony, together with any additional testimony which discovery provides, which would be presented (Factor 3), and these issues cannot help but be raised in such a time as to risk delay of the proceeding since the exercise date and the release of information were set by federal or state agencies and/or CP&L, not by me. Where others control the timing, allowing Factor 5 (broadening issues or delaying the proceedings) to weigh against me would be violating the public's right to hearing under the Atomic Energy Act, as established in the UCS case, supra.

As to other matters addressed by Applicants (where they echo the Staff, the above should be taken as my replies on the issues and facts), they allege (p.6) that the 3-part test of CATAWBA, CLI-83-19 applies, i.e. the contentions must be wholly dependent on the content of a particular document, could not be advanced with any degree of specificity in advance of the public availability of that document, and is tendered with the requisite degree of promptness once the document becomes available.

Since the basis of these contentions are specific facts found in evaluators' reports from the State of NC and FEMA, that basis

obviously could not have been supplied without the documents.

In a handful of cases, Applicants argue the information was earlier available (besides being in the FEMA Interim Findings, covered on pp 4-5 above). For example, at page 32, they argue the need for more telephones at the Harnett EDC was known, citing the public critiques session transcript at ~~7th 72d 73d 74d 75d 76d 77d 78d 79d 80d 81d 82d 83d 84d 85d 86d 87d 88d 89d~~ 89.

On that page appears the following:

(...)And this is the bottom line, what it's all about. Some of our shortcomings: Our E.O.C. -- like I say, our county has never opened up a E.O.C, so we used the hallway of the courthouse in Lillington -- Lillington, not Littleton, as I said a while ago. But on Friday, court was going on. We had some problems with security, noise, whatnot and communications, the number of telephones in the E.O.C and communications as a whole. (...)

That's all I can find about telephones on page 89. I can readily imagine the objections Applicants could raise on vagueness, lack of specificity, etc, (even perhaps saying that this doesn't say there weren't enough phones, which it doesn't), if this section had been advanced as basis for a contention. Moreover, this contention's basis is a whole host of communications deficiencies, not just this one. It is clear the transcript does not provide the basis for EPX-2; it's arguable whether it even provides basis for the part of EPX-2's basis Applicants cite to.

Similarly on the same page, re EPX-4, Applicants cite the same transcript at 91 for revealing need for additional training of Lee County radiation monitoring/decontamination personnel. On page 91, it says:

(...)We do need a little more training perhaps, as has already been mentioned in monitoring (...)

and goes on to say "which we'll take care of". This cannot compare with the specificity of the basis of EPX-4, which explains in detail what was found factually to be wrong with the training and performance. The 'iffy' statement in the transcript cannot provide this basis.



Applicants make similar absurd assertions while mischaracterizing EPX-5 (Applicants at 33). The contention is about siren activation= delay and means of assuring that activation can be verified. It is not about people not hearing sirens, nor is it covered in the news articles Applicants cite and supply. They also cite Transcript 41-42 from the public critique. This reads:

Mr. Willis: I believe there was a problem on Friday, in that the sirens may not have been activated when we thought. But Saturday, I believe they were activated.

This is not definite about the activation problem one way or another. It certainly doesn't address the delays and is dubious at best ("may not have been activated when we thought") on verification.

They also cite to pp 64-65, which concerns the sirens not operating, and working through the night to repair them. However, delay again is not mentioned, and activation in the wrong (silent) mode is the problem. These things are not the same as the basis of EPX-5. A different contention might have been advanced based on these statements, but the vagueness of the statement on pages 41-42 and the lack of specifics about the problems generally on pages 64-65 would not create this contention.

Applicants also argue (35-36) that other parties will represent my interests. "Willingness to address identified problem areas" (id., 36) is not the same as representing my interests. Anyone who has observed FEMA's responses and affidavits on contentions can see that this suggestion is ridiculous as regards FEMA; there is no evidence the State has made specific commitments on these matters, but in any event the resolution of the problems is a matter to either be documented (if it's been fixed) against admission of the contention, or for the contention process.

As to setting out the issues with particularity (factor iii,

Applicants at 37), the references to the State evaluation ~~my~~ report and FEMA's Interim findings show where the relevant facts are in the basis. It is clear that these are quite particular, and in many cases they are detailed to highly specific points (e.g. questions asked about lack of training, specific incidents of communications problems). As to not identifying the witnesses by name, they (the State evaluators) are named in the source documents. As to summarizing testimony, the facts as stated in the evaluations are the only summary easily available, and it is more detailed than that of witnesses like the Wake County Sheriff's Department officers in the recent drug abuse contention hearing (who had no prefiled at all). As to what they'd testify to, they would present facts. There is no evidence that they have ~~thammm~~ made any false statements in the evaluations as to matters of fact, that I am aware of.

Applicants fail to address the different circumstances of this ~~mainin~~ time as distinct from last fall (e.g. I am healthier and have much less to do in this case now) which weigh in favor on factor (iii). [3]

As to Factor (v) [5] I have addressed above the reasons why delay and broadening issues are by definition almost inevitable in contentions on emergency planning exercises, and thus cannot be held against these contentions without violating the right to a hearing under the Atomic Energy Act. Applicants also say (p. 340) that it is unattractive to them to have contentions pending during low power testing, though this has been practice in other licensing proceedings, especially re emergency planning, ~~xxx~~ Applicants' convenience is no reason to reverse the interpretation of the Atomic Energy Act given in UCS (735 F2d 1437) that the public has a right to a hearing on issues raised in the emergency planning exercise, before a full power license is finally granted.



Applicants earlier argue (pp 9-10) that these contentions may go beyond the Commission's requirements. But there is no specific showing that any of the contentions do so. In fact, the contentions simply request what the rules require -- that when the emergency plan is activated, it will work, as planned. Given that an exercise happens at a known time, failures in training, communication, radiation monitoring, decontamination etc, as ~~all~~ stated from facts in the bases of these contentions, are more serious because they happened even when it was known when the test was coming and there was not the stress of a real accident. It is likely that more failures, not less, would occur in an accident occurring without a warning.

The Staff, as noted above, keeps saying "FEMA didn't find this an insolvable problem or major defect," or words to that effect, which shows how these contentions rebut FEMA's findings (contrary to Applicants' statements at the top of page 12).

They also say (p.14) I haven't shown these problems cannot be corrected. Nor should I have to. "Impossible to correct" <sup>(the problem)</sup> is not a standard for admission of any contention describing a problem.

Applicants' specific comments go mainly to the merits. The message they cite re EPX-1 (#207) in fact includes the time 1244 in the attached text, which text therefore cannot have been completed as of the message time, nor transmitted then.

Re EPX-3, Applicants (p.18) cite the Staff report. There is no <sup>ac</sup> presumption in favor of staff findings, even if unrebutted. The adequacy or accuracy of Staff conclusions is a matter for discovery or hearing.

re EPX-4, Lee County's "Commitment" (meeting Tr. 91) is vague at best and says nothing about the facts cited.

re EPX-5 (p.20) the transcript says only that "we would expect that these problems would be corrected before the planned testing of those sirens is passed upon (Tr. 77-78 at 78). That doesn't say the flaws cited in the contention don't exist, nor that they are being fixed.

on EPX-6, they ignore the facts of delay in announcing the general emergency.

On EPX-7, the FEMA exercise report (interim findings, p.9) never says that the system "was operating smoothly on the second day."

EPX-8 and 9 responses are going to the merits.

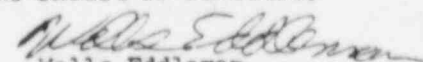
On EPX-10 they say "This matter is obviously readily rectified." (p.25) So why hadn't it been in advance of a known test????? Likewise, why wasn't the radioiodine training adequate (p.26). This is all dispute about the merits.

On EPX-12 the Applicants' statements show it took 54 minutes to dispatch help after it was requested. They never show when help <sup>ad</sup>.

On EPX-11 they don't show why the copier problems happened, or that they could not recur at any time.

For the above reasons, these contentions should be admitted.

29 October 1985.

  
Wells Eddleman

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NUCLEAR REGULATORY COMMISSION

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Shearon Harris Nuclear Power Plant, Unit 1

Docket 50-400  
O.L.

CERTIFICATE OF SERVICE

I hereby certify that copies of Wells Eddleman's Reply on  
Emergency Planning Exercise (EPX) contentions  
HAVE been served this 28<sup>th</sup> day of October 1985, by deposit in  
the US Mail, first-class postage prepaid, upon all parties whose  
names are listed below, except those whose names are marked with  
an asterisk, for whom service was accomplished by express mail  
under ~~an~~ extension of time agreed to by Applicants and Staff, and Board.

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