



Control Number: 33156



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Public Utility Commission of Texas


Memorandum

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FROM: Commissioner Barry T. Smitherman 

RE: Docket No. 33156 – *Petition for Declaratory Order Regarding Safety and Reliability*

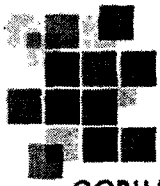
DATE: September 11, 2006

The attached material, which was presented at the NARUC Summer Meeting, provides an interesting perspective on some of the issues in this docket, and for that reason I wanted to add it to the administrative record.

**Trust ... but Verify:
A Measured Response to Emergency
Preparedness**

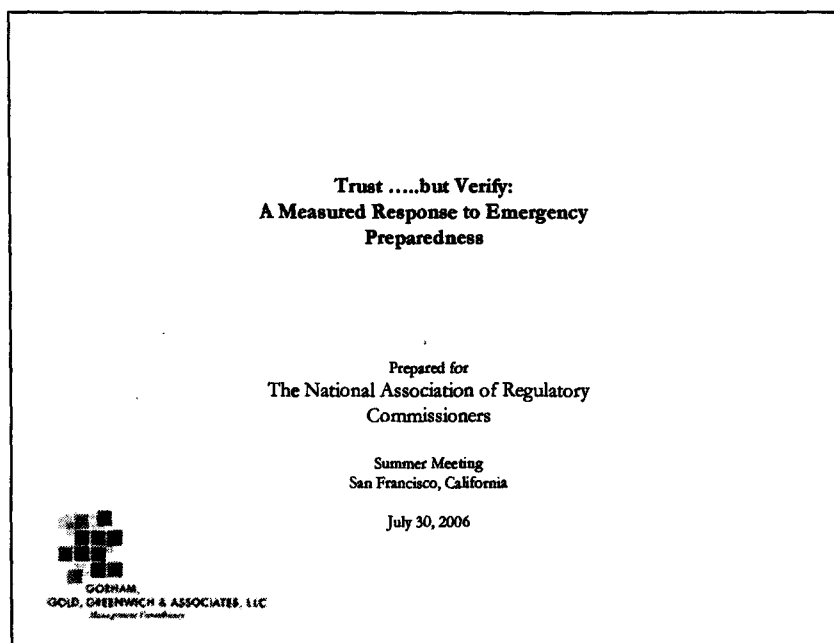
**Presented
by
Gregory Loyd Mann -- Managing Vice President**

**NARUC Summer Meeting 2006
San Francisco, CA**



**GORHAM,
GOLD, GREENWICH & ASSOCIATES, LLC**
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Introduction



Good morning ... And welcome to our latest NARUC breakfast briefing. I am Gregory Mann, Managing Vice President of Gorham, Gold, Greenwich & Associates.

Many of you know Ed Salmon ... but I want to take a moment and thank him for jointly hosting this session. Salmon Ventures is privately-held public policy firm headquartered in Millville, New Jersey. Ed and I have collaborated for a number of years. I have come to appreciate and respect his knowledge, his instincts and his devotion. I value his professional opinion ... and his personal friendship.

Gorham, Gold, Greenwich & Associates is an independent, multi-national consultancy specializing in public utilities. For three decades Gorham, Gold, Greenwich & Associates has advised regulators, directors, attorneys, fund managers and investment bankers on four continents in matters of strategy, leadership and compliance. We are not as large as some consulting firms ... or as well known as others ... but we believe offer our clients precisely what they seek from any advisor – critical advice, creative thinking and complete confidentiality.

For those of you who have not joined us for one of these sessions before this morning let me take a moment to acquaint you with our firm...and our purpose for these breakfast meetings. Gorham, Gold, Greenwich & Associates is a multi-national consultancy specializing in public utilities. For three decades Gorham, Gold Greenwich & Associates has advised regulators, directors, attorneys, pension fund managers and investment bankers on four continents in matters of strategy, leadership and regulatory compliance. We are not as large as some consulting firms...or as well known as others...but we believe we offer our clients what they seek from any advisor – critical advice, creative thinking and total confidentiality.

From the time our firm was established in 1989 we have held to one unaltered proposition... that regulation is a dynamic process ... a process where policy and politics move in tide with the temperament of the public. It is not an abstract concept...but flesh and blood decisions that must balance the theories of policy and the realities of politics. In my view, regulation must reflect the public's preferences ... and regulators must respect the public's wishes.

For more than thirty years, regulators have heard the public's cry for "greater choice" ... and regulators have worked to meet the challenge. To that has been added the cries for "greater value", "greater fairness", "greater opportunity", "greater access" and "greater productivity". And, now, we hear the cry for "greater accountability". It seems that regulators have an ever expanding set of challenges as the public's expectations continue to rise ... and will, undoubtedly, continue to rise in the future.

As mentioned already, the subject for discussion this morning ... is what steps regulators must take ... to be certain that the response by any utility to extraordinary events is prudent, practical and proportionate.

In some respects I feel I have been in this pulpit before with a prior generation of regulators. 27 years ago this week I was preparing remarks I was to present to the Senate Sub-Committee for Nuclear Oversight then chaired by Senator Gary Hart. Like this morning the subject was the ability of utilities to meet extraordinary events arising in the course of operating nuclear power plants. The basis for my remarks was a six-month investigation of the problems that arose on March 27, 1979 at the Three Mile Island nuclear generating station then operated by Metropolitan Edison near Harrisburg, Pennsylvania. My testimony was entitled "Contemplating Catastrophe"...and the opinions offered were not good. Utilities were generally not prepared...even the ones who thought they were were not. Worse still was the fact that the responsible state regulators believed there were because they said no. No one had even questioned their representations of readiness. Few regulators had even asked to see their response plans...an none had ever done more to test them than to write them.

In saying that I do not mean to imply that regulators have not been given adequate attention to emergency preparedness in the past. Quite the contrary I think state regulators have always viewed preparedness as part of their agency's mission. I must, however, point out that in recent years a number of other public agencies have come to view this topic as theirs ... and sometimes, theirs exclusively. That was then...this is now...but I must admit I feel a little like Yogi Berra who once remarked "it feels like déjà vu all over again.

As various emergency organizations and relief agencies have emerged in the wake of recent disasters and near-disasters to take control of matters, it is easy to assume that each and every problem is being accurately defined, honestly communicated and properly addressed by the responsible parties. Were I a wagering person -- and I am not -- I would be willing to bet that is not the case ... and especially not the case when it comes to preparedness by the utility community. The simplest review of the "lessons learned" reports prepared by the United States House of Representatives and the White House suggests that not much has changed in the world of emergency preparedness since 1979. Those responsible for planning the response to catastrophic events have very little understanding of what it will take to manage these situations ... and even less interest in taking the difficult steps needed to effectively meet it.

Before we get started I want to take a moment and be certain we are all on the same page when we start to talk about the need to be prepared for catastrophe.

First, everyone in this country has been...and will be.... touched by a catastrophe-- whether they live in big cities or small, farms or towns, on the coasts or in the hinterlands, rich or poor, old or young ... no one is more than one step from knowing someone affected by disaster in their life. Any one who believes their community is immune to catastrophe is likely to find out the hard way they are wrong. Consequently, the need to better prepare for unwanted events is universal ... the need to better respond is essential...and the need to better communicate is crucial.

Second, there is a lot of effort being devoted at the federal level to emergency preparedness ... there are a lot of flowcharts and organization tables being constructed ... a lot of new rules, regulations and reports being drafted ... all in the belief that additional measures will stave off another catastrophe ... or divert embarrassment for failure to someone else. Some of this effort can be attributed to the fact it is an election year ... and every politician needs to demonstrate concern for this issue. Some is intended to truly improve the response (and the image) of the public sector – but none of the effort will improve the capability of the private sector to meeting the new challenges of emergency preparedness. In short, the private sector – utilities included – is on their own.

Third, government's focus continues to be blurry in the current preparedness debate. Every public safety agency involved has a different set of concerns – be it terrorism, technology or nature. The consequence is the same -- constant revisions, conflicting priorities, changing responsibilities, capricious bureaucrats and compromised policies. The basic message here is that your priorities ... and those of the feds ... will not likely coincide ... and even if they do have some commonality you will receive federal support only to that small degree where your interests meet theirs. Anything beyond that small corridor of commonality will be trivialized, ignored or dismissed as unfounded...no matter how critical it is to you and your constituents.

Fourth, regulators are charged with protecting the public's interest in matters related to utility services ... ensuring its affordability, its reliability and its responsibility. The public assumes regulators are working to present their concerns to utilities... and hold them accountable for their preparedness. The public has little ability to evaluate your efforts – but they see, they hear and they read what is happening ... or not happening. And when they encounter a catastrophic event they will know if their trust in you has been well-placed.

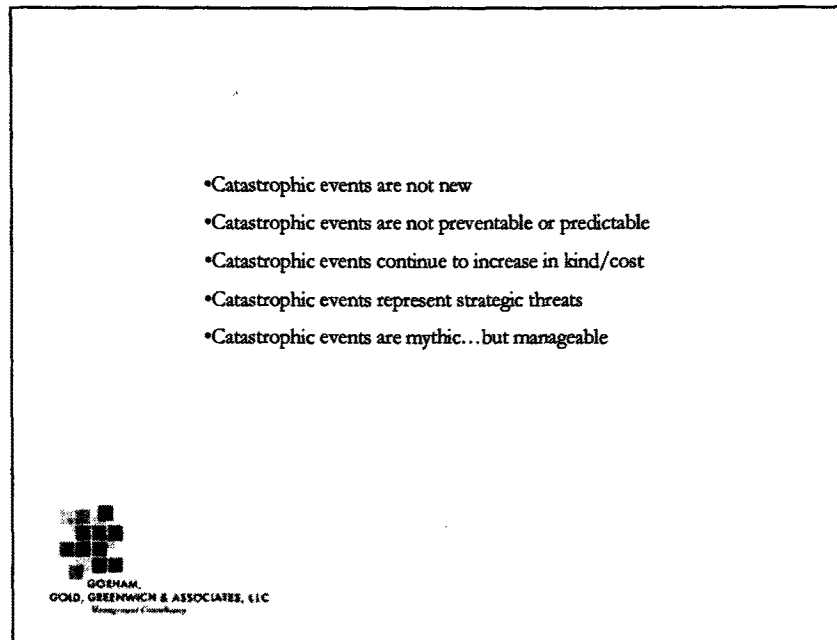
The net of all this is that state regulators face an uncertain future filled with too many promises...supported with too few resources ... and shadowed with too much liability. A dream...a dream envisioned by others but left, in part, to you to make real. We believe regulators must find creative ways to “close the gap” between the public's presumptions ... and the utilities' preparations ... and be able to proclaim their utilities are ready, willing and able to meet the challenges of a wide range of catastrophic events.

In recent months, the relatively arcane topic of emergency preparedness has unfolded ... into a subject of broad public concern. The issue has not seen much attention in recent years but it rose quickly on the public's radar screen shortly after the Indian Ocean Tsunami in 2004 with the non-stop news coverage and high-profile international response – always a recipe for political troubles. Before it passed into the realm of history, Hurricanes Katrina and Rita renewed both the media interest and the public's fears. On the fringe we have innumerable concerns such as pandemics,


nuclear safety, domestic disorder, earthquakes, railroad strikes, bio-terrorism and a range of ideological threats that all serve to fuel the public's consciousness. The past several weeks have seen large-scale outages in St. Louis and New York that have raised cries in the press and of "criminal negligence" and "gross mismanagement" against Ameren and ConEdison.

Opinion polls continue to show growing concern for public safety and personal security ... and a corresponding loss of confidence in government to protect them. At all levels of our community, catastrophic events are now viewed as not a matter of "if" they will happen but "when". Catastrophic events ... too often portrayed in books and on the screen as "extraordinary"... are now seen as "everyday". Events that Americans have assumed could only happen only to others ... are now real, upfront and personal. Simply put...people feel insecure and are looking for signs that someone is there to shield them from the invisible threat. They may be expecting too much...but that is the real world that we must accept as we plan.

Problem Statement



- Catastrophic events are not new
- Catastrophic events are not preventable or predictable
- Catastrophic events continue to increase in kind/cost
- Catastrophic events represent strategic threats
- Catastrophic events are mythic...but manageable


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For the past hundred years individuals – and institutions – have fostered an illusion that with better technology... better management ... better oversight ... we can make our world immune to catastrophe and ourselves immortal. Dams were built in the belief spring flooding could be averted, international air traffic control systems would avert airplane collisions, mine safety standards would reduce accidents, early storm warning systems would reduce loss of life and regional power grids would eliminate blackouts. We built bomb shelters against fallout, installed car alarms to thwart burglars, installed security gates in all our public buildings and built fences on our nation's borders...all in the belief that we can make the world completely safe to live in.

Yet we need only look to see that floods still occur, air collisions still happen, mines still collapse, storms still kill and power systems still fail. The public has seen all of the so-called precautions that we have taken fail when the real test comes ... and that same public always looks for someone to blame. It will matter little whether their expectations of security and safety are real ... or unreal ... they will want retribution.

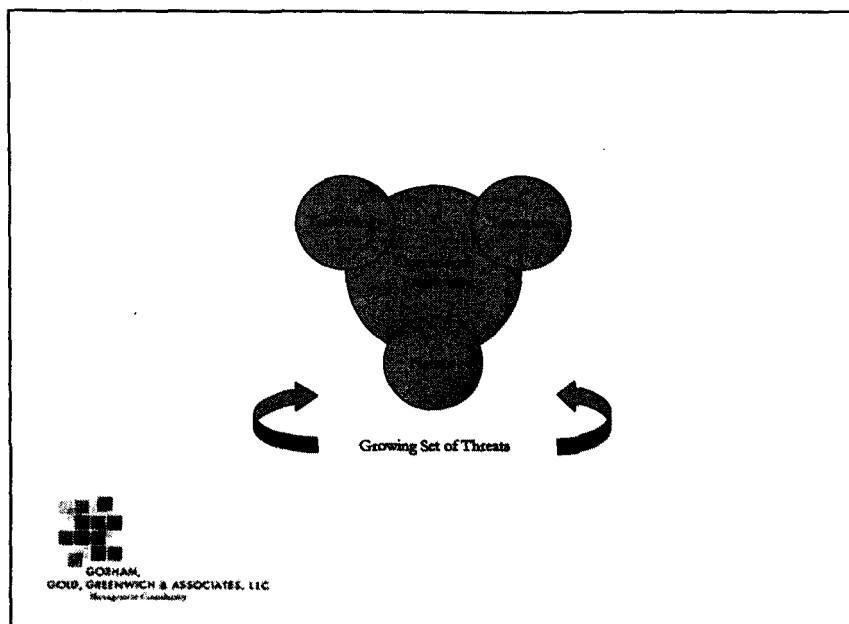
One need not look far... to see how people look for others to blame ... in times of distress. Any significant failure by a public utility brings scores of consumer complaints, countless legislative hearings and endless media coverage. At the center of their criticism is always the regulator. Responsible for overseeing the community's critical public services, fingers point from below ... and above ... at every commissioner ... second guessing their role and responsibility for their distress. In the mind of the public, some one must be held accountable ... and regulators are always the easiest target for condemnation.

When a substation fails ... and the lights don't come back in a matter of minutes ... frustration gives way to anger. While the first call might be to the utility...the second call will, undoubtedly, be to you. Why? Simple. You stand as the guardian of their interest. You hold the power to praise ... and to punish. You stand as the only force between the user and the utility ... and the public expects you place yourself in harm's way for them.

Now imagine the public's disappointment ... and displeasure ... when outages are wide-scale and long-lasting. Give no thought to making excuses for the utility because the public does not want to hear it. They find it hard to see the utility as a victim ... no matter what the reason – nature, technology, labor unrest, accident. Someone must accept the blame...and someone must be punished ... and, if not the utility, it must be the Commission – because if the Commission can't fix it they certainly should have been able to prevent it.

Faced with the prospect of unvarnished criticism in the event of any future utility disruption, regulators have a responsibility to themselves ... and the public ... to take steps to ensure utilities fulfill their public duties. We believe regulators faces a future filled with growing exposure to massive disruptions from mechanization, globalization, manipulation and competition. The utility industry is rapidly changing and regulators must be vigilant if they are to ensure the public's interests are protected.

Reliability Threats



An extensive body of academic research shows that the number of events affecting the operational reliability of public utilities has increased in number, duration and damage over the past several decades; more importantly, the “needle” seems to be pointing toward still greater chances for disruptions in the future. Decades of planning and billions of dollars in emergency planning have not translated to fewer failures ... only different ones ... ones that management generally has proven unprepared to address.

For much of history, nature posed the primary source of threat to a utility’s operational integrity ... hurricanes, earthquakes, floods, forest fires, tornadoes, blizzards. But in recent years, we have come to recognize new ... and often greater ... threats from technology and terrorism.

The ever-increasing use of technology has produced new managerial challenges ... even as it has afforded greater productivity and lower prices. Technology breakthroughs have fostered a new generation of sophisticated power plants. Rising commodity prices are contributing to the rehabilitation of nuclear power. Telecommunications advances have substantially increased the need for – and value of – telecommunications in the daily life of every American.


Terrorism – be it by radical environmentalists, anti-nuclear activists, extremely competent “hackers”, criminal opportunists, dissatisfied employees or political anarchists – is virtually unpreventable and must be judged a threat equal to that posed by nature and technology.

The combined threats to operational integrity – technology, nature and terrorism – represent a recipe for explosive consequences. Utilities today face a myriad of challenges to their operational reliability ... and with every threat that materializes regulators face public criticism. The question

remains whether – are utilities, in fact, prepared to meet those challenges?

Level of Interest

- Utilities have financial, legal and managerial obligations to have effective emergency planning processes, procedures and plans
- Regulators have statutory, moral and political interests in ensuring any utility-developed response is consequential and compliant
- The Public will not distinguish between utilities and regulators for any identifiable failure
- Utilities have not publicly evidenced any difference in their emergency planning efforts as a consequence of recent events
- Regulators have not publicly evidenced any significant interest in matters of public safety and security



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We do not think it is prudent to simply assume that management is a) doing everything possible to eliminate threats where they are evident ... and b) prepared to face their consequences when they cannot be eliminated. Like every decision faced by a corporation's directors, safety comes only at a cost ... a cost that must be managed to ensure shareholder's returns are not threatened. Therefore, it is reasonable to assume that – left unchecked – every utility's emergency preparedness measures will be found inadequate.

We believe regulators must verify every measure taken by utilities to be certain they are sufficient to meet the public's expectations and compliant with any Commission requirements. With that said, we would be remiss to suggest utilities have not taken some measures already. Utilities have a real interest in reducing financial exposure from catastrophic events ... they all need to reduce any legal claim that might emanate from a catastrophic event from charges of "gross negligence" to "negligence" with better planning ... to reduce revenue losses from unplanned outages with better preventive maintenance programs ... to increase plant availability with better management practices and ... to mitigate the legal consequences of any event with better "paper trails" and public relations strategies. It is in their own best interest to prevent what can be prevented ... and prepare well to contain the consequences of that which cannot ... but only to the degree that the cost of doing so remains within a very small budget. For you see, most utility executives continue to conclude that "since it hasn't happened ... it won't happen."

I will remind you that shortly after Three Mile Island operators of nuclear power plants actively opposed new NRC regulations arguing something like that could never happen to them. When Chernobyl went critical the industry was, again, quick to argue that something like that could never

happen in America. The bottom line is that it can, it will and it will in our lifetime. Effective emergency planning must assume a broader plane of interest if it is to be effective ... and the only way that broader plane can be assured is with aggressive regulatory involvement.

Regulators have a legitimate interest in seeing that every utility's planned response conforms to generally accepted standards and its unique public needs. As designated agents of their state leaders, public utility regulators have an obligation to ensure that emergency planning is properly conducted; plans are complete; people are capable and competent. Second, regulators must be certain that utility plans reflect an understanding of their critical role in any public agency response to catastrophic events. Third, only regulators can impose catastrophic planning obligations on utilities ... responses required by multiple failures that demand greater communication, coordination and control across utilities and public safety agencies. And finally, regulators must take steps to insulate themselves from political-based criticism of their action – or inaction – in these matters to ensure public policy is not co-opted by others.

The public expects perfection in these matters. They see any outage – even the smallest – to be a product of managerial incompetence or regulatory indifference. Any systemic failure – of the magnitude that now seems possible – could certainly engender public outrage and charges of gross negligence and criminal neglect if it can be shown that regulators have turned a blind eye to questions of safety and security. Given the power to prevent that from happening it is hard to imagine any regulator willing to take such risk.

For more than a quarter century, America's elected leaders have sought to improve the "ring of security" available to the public. Today, the Stafford Act – first adopted by Congress in 1974 – provides the statutory foundation for much of the nation's emergency response mechanism. Over the years, sections have been revised as the nation's experience with catastrophic events illustrated the need for new powers and greater prerogatives. With more than 30 years of experience in coordinating disaster response, the one thing that can be said with certainty is that "disasters" are a constantly changing set of events that demand full attention, creative responses and resourceful leaders.

According to the enabling legislation, primary responsibility in emergency situations falls to the responsible federal agency – FEMA. Plan development, resource allocation and operational execution are entrusted to designated state agencies. It is those agencies that will serve as the controlling body for all response measures.

That said, however, there is a problem. As we see it, emergency planning appears to be slipping from the public "horizon" again as we move further away from the dramatic events of last fall...and assurances are given that everything is "under control". Only the periodic media warnings of more natural disasters this coming summer ... and the portent of increased construction in the nuclear sector ... seem to keep the topic on the radar screen of even a small portion of the population.

The recent response to events on the Gulf Coast clearly shows we have a long way to go to achieve any semblance of control over large-scale catastrophic events. Congress and the White House agree that we have a long way to go ... and continue to make efforts to improve their response capabilities ... but I want to emphasize the fact that efforts to improve governmental response only "touch" upon the needed response from the private-sector.

An inherent weakness of almost every disaster scenario prepared by federal agencies is an assumption that public utility services will either be a) generally available, b) disrupted for only brief periods of time or c) confined to small geographic areas. No one is prepared to conceive of a scenario where power outages are widespread, communications networks eliminated, water systems contaminated and gas distribution systems compromised for an entire city, a state or a region. In this regard, public safety agencies implicitly violate the first rule of emergency planning – prepare for the worst and hope for the best.

In part, that reflects the view of most emergency planners that business has its own responsibility to ensure it has taken the necessary steps to prevent, prepare, respond and recover to any significant catastrophic event. Implicit within the message of Congress and the responsible public agencies, utilities are expected to be fully operational under even the most difficult conditions, to have taken all of the necessary steps to maintain that operational condition, and to do so without any financial support from the federal government.

It is worth noting that the weak response to events in the Gulf rapidly translated to diminished confidence in government and a growing base of concern for the design – and siting – of critical infrastructure ... oil refineries, chemical plants, telecommunications centers, power plants, railroad tracks. Harris opinion polls suggest that public safety has the potential to be a major political issue in the off-year elections as it draws more media attention in the coming months.

More importantly, critics have taken the public's concern for safety as a stick to poke at the idea of resurrecting the nuclear option. They argue utilities have too little experience – and even less expertise – with the technology to warrant new licenses. In their opinion, nuclear power introduces an unnecessary variable to the emergency planning equation that should be opposed. At a minimum the criticism will certainly raise the “bar” for emergency planners ... and subject regulators who endorse it to still greater scrutiny.


And yet the facts suggest that most utilities have not done much of anything to improve their emergency response capabilities; and if they have they haven't done anything to inform the public. In several instances, senior executives have shown relative indifference to the matter delegating responsibility downward in their organization.

We know with certainty that every new catastrophic event will trigger concerns, questions and recriminations about what has not been done since the last time this issue was raised. The target for all this finger-pointing will be utilities ... and the regulatory agencies that over see them ... and critics won't make any effort to separate the innocent from the guilty. In the public's mind, there is enough blame to go around for everyone to share some no matter how small their sin might be.

In the politically-charged environment that follows any catastrophic event it is imperative that each of the principals – in this case, utilities and regulators – be able to demonstrate that every reasonable effort has been made to protect property and preserve life. To do that utilities must be able to show that they have made reasonable efforts to reduce the possibility of a catastrophe ... and I put emphasis on the word “show” because that is exactly what must be done. To a relatively disinterested public “seeing is believing...” proof-positive that some action has actually been taken to improve security and safety. In short, utilities need to 1) plan better for emergencies, 2) show those plans to be more than adequate to meet the needs of the communities they serve, and 3) demonstrate genuine commitment to improving the security and safety of the public they serve.

Simultaneously, regulators must show that they, too, are concerned about the public welfare ... and recognize the responsibility they have to improve safety and security in their communities. Regulatory agencies are part judicial and part political...and every action reflects upon the state's political leaders. The reality is that emergency planning is not only a public policy issue ... but a political one as well. We need only follow the saga of Hurricanes Katrina and Rita to see the need to better prepare for a much wider range of unexpected events – be they natural or man-made; be they recognized in our plans or unrecognized. Simply put, utilities can't be afraid to plan for unwanted challenges ... and regulators can't be reluctant to “call” their play and “test” their plans.

Recommended Action Plan



•Conduct an independent assessment of PUC roles, responsibilities and requirements in emergency planning

•Order a third-party comprehensive review of emergency plans by every utility with emphasis on breadth and depth of plans

•Solicit comment on sufficiency of utility plans from responsible state and local emergency planning agencies with emphasis on inter-entity cooperation

•Issue an assessment of individual plans and any recommended actions to bring plans into compliance with prevailing, rules, regulations and responsibilities

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Fairly...or unfairly, the fact is that the public has come to place enormous trust in regulatory agencies to protect them from harm ... and will, undoubtedly, hold them accountable for any failure in the future to do so.

Risk analysts currently project less than average risk of a catastrophic event in the near future...but one never really knows whether they are right or wrong until it is too late. Since March, 1979, more than 1000 regulators have served their respective states and only a handful had ever had to face the fear, frustration and fatigue of an angered public that the Pennsylvania Public Utilities Commission encountered after Three-Mile Island.

If we accept the currently used risk assessment models as reliable, the “odds” are good that you will never face a catastrophic event in your professional career. But we believe a measured response by the regulatory community can further reduce the risk of catastrophic failure and contain the consequences of any that is encountered. We believe no regulatory agency need face the

consequence of massive failure without some “insurance” ... some “hedge” ... some “protection” against unwarranted criticism.

I can say with absolute certainty that people on the other side of the table ... your corporate counterparts ... are actively working to insulate themselves from personal liability and financial loss in the event of any catastrophe ... even if the means to do so won't necessarily afford the public greater protection ... or it means shifting responsibility for failure to someone else – you included. As one corporate executive remarked to me “it's nothing personal...it's just business” ... the only problem with that is that it might be business for him ... but it is personal for you.

Utilities – and their advisors – count on your complicity to achieve their goal. They assume regulators will not actively challenge their actions ... thereby conceding to them a broad defense to any future charge of inadequate plans, incompetent management and unqualified failure. They understand the fact that catastrophe will occur; the public will want accountability and the need to have someone else picked out to pay for it. The issue is personal survival and utilities are looking for any means possible to improve the odds on their side.

By demanding a larger oversight role in utility planning processes regulators can challenge the assumptions ... the scope ... and the very scale of any proposed response. Assuming a bigger role doesn't necessarily mean regulators are encroaching upon the prerogatives – or authority – of other public bodies. It simply means regulators are fully exercising their statutory authority – and delegated responsibility – to protect the public's interest. This is nothing new ... nothing extraordinary ... just aggressive pursuit of lawful authority.

The current climate demands greater responsiveness on the part of every governmental agency entrusted with public safety and security. Regulators have a responsibility – and a right – to review the state of preparedness for every utility within their purview and judge the merits of their efforts. The creation of other public agencies by state or federal initiatives has not alleviated regulators of their responsibility to ensure the utility community is ready and able to meet a wide range of operational challenges. That single duty remains unabridged in spite of all the effort of others.

Based upon our experience we think regulatory interest should be directed at four dimensions of any utility's emergency planning efforts – prevention, preparation, response and restoration – seeking to assess the sufficiency of their effort and the consequence of their actions.

This responsibility extends to those otherwise exempt from the general regulatory authority of the state regulatory agencies but who represent a critical component in any comprehensive preparedness plan – wireless providers, interexchange carriers, CATV and pipeline operators. We believe authority and responsibility deputed to the individual states by Congress in the Stafford Act affords a statutory foundation that regulators can adapt to meet their need for broader authority. The public welfare demands it and state regulators are in a position to ensure it ... the only thing missing is the political will to do so and the regulatory tools to achieve it.

Any suggestion by critics that regulators are exceeding their authority can be met if regulators show they have better evaluation methods ... measurements ... and metrics than those employed by other reviewing agencies. We believe processes adopted by the regulatory community in the 1980's -- to evaluate efficiency and effectiveness of utility operations -- afford a highly adaptable framework for your use. It affords a rigorous methodology, process-oriented approach and broadly accepted

framework for this type of evaluation. Coupling the process with a legally recognized set of performance standards previously applied to nuclear retrospectives ... I speak of the “reasonable man” principal ... we give regulators the means to accord utilities full and fair consideration of the processes, plans and partners of every utility in its domain.

The foundation for any investigation must be a company-developed emergency response plan. It is incumbent upon every utility to show their concerns and demonstrate their compassion. They must be seen as devoted to improving safety and security – for not only their own self-interest but for that of their communities. The services they represent – power, light, gas, water, communications – are intrinsic to the response capabilities of so many others – fire, police, hospitals and emergency services. Utilities provide the “enabling technologies” that define the quality of any community’s response to devastating events.

We know from recent experience that any prolonged failure to provide service ... or any ineffective response to an outage ... impedes the planned response of others ... and compounds the risk to the public. It is mission-critical for other respondents to be confident that the utilities are well-prepared, well-managed and well-committed to meet any challenge that might be presented to them in the future.

Therefore, we advocate a comprehensive examination of current utility preparedness plans – including the extent to which those plans recognize responsibilities to a much broader set of dependents than just the utility’s immediate subscribers. We do not believe regulators need be co-opted into joint planning with the companies but they must be active critics if they are to ensure any proposed response is adequate to meet the needs of the community.

I need not tell you that in matter such as these the need to protect institutional integrity in times of crisis is critical to your agency’s future standing. What measures a regulatory agency takes in advance of crises is many times more important than what is done afterward.

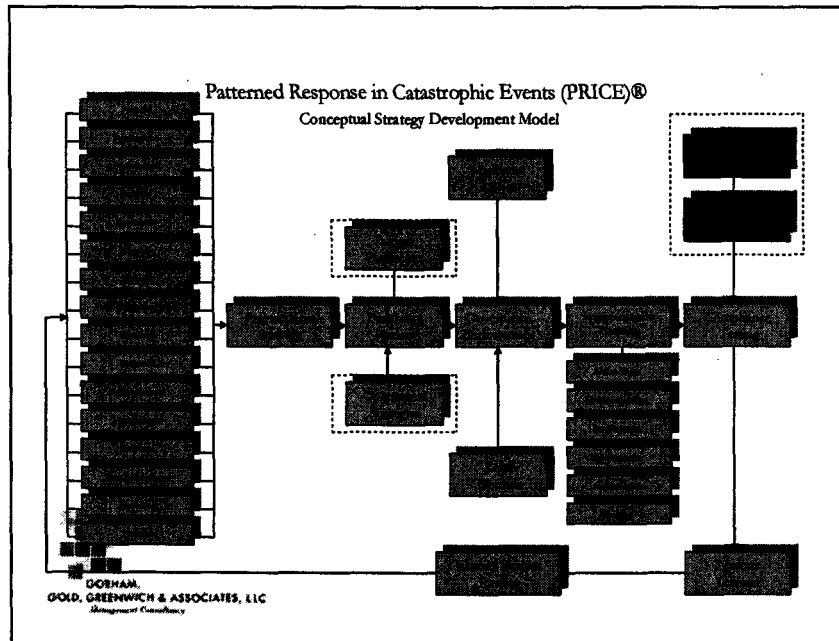
We believe regulators should take the opportunity currently afforded to rigorously assess the processes, procedures and plans that utilities envision they will use in times of crisis. We believe regulators should scrutinize processes, procedures and plans against a range of recognizable challenges with rigorous standards. In so doing, regulators have the luxury of looking at these scenarios in terms of “what may be seen” rather than “what has been seen”.

By suggesting here that regulators should take upon themselves the burden of delving into the utilities’ emergency preparedness strategies we do not mean to suggest that regulators have not evidenced interest in these matters in the past. However, we believe the renewed public interest in this matter demands that agencies consider the need to undertake an even more rigorous examination of any proposed plan than has been done in the past ... one that will satisfy the heightened concerns of the public and the insatiable interest of the media ... as well as any statutory obligations held by your agency. The political undercurrents surrounding this issue suggest “revisiting” your agency’s current positions would be worthwhile ... but the public respect your agency accrues by demonstrating stronger leadership in this matter is the most compelling reason to pursue it.

The broader benefits of conducting a public inquiry are self-evident ... a strengthened commitment to emergency preparedness, improved coordination with other responders, control. The outcome

need not be an endorsement of the company's plans ... and probably should not be ... for obvious reasons. On the other hand, the conclusion of any examination is not what this is about ... since we know with certainty that many of the challenges that utilities face will fall outside the scope of the plans. The importance lies in the ability of the Commissions to voice their concerns, demonstrate their commitment to "closing the gap" between expectations and reality, and affording the utility's an opportunity limit their own financial exposure in the event of some catastrophe.

Framework for Review



On the screen before you I have depicted the process that we recommend to our utility clients when they conduct their own critique of emergency preparedness – and one that we would recommend you consider for yours.

The review process marries a highly-disciplined methodology (“management auditing) with rigorous investigative processes (“systemic/systematic topologies”, “root-cause analysis”, “evidence preservation”, “responsibility mapping”), recognized evaluation methods (Gap Analysis, FMEA, MRA, BDP, HazOP, ATR, SM, etc.) and accepted performance standards (“reasonable man” principle, compliance, seen evident, malfeasance, negligence, federal/state rules and regulations, best demonstrated practices).

In summary, the approach gives management – or a regulator -- a comprehensive examination and rigorous critique of processes, plans and people responsible for all aspects of any utility's emergency preparedness strategy. The evidence and opinion developed in such an investigation provides sufficient basis to confidently conclude a utility is adequately prepared to meet a range of unforeseen challenges – or the need to take additional measures to meet the public's expectations, your agency's prescribed requirements or to reduce legal exposure in the event of an unforeseen incident.

In conclusion, I would mention that these techniques, measurements and standards have evolved over a period of more than 30 years – in a variety of industrial settings where prudent planning and managerial skills have proven critical to both specific companies and industries. We have absorbed *them into our investigative framework* because we believe they afford the means to examine every facet of this issue with the benefit of other's experience and expertise. Critical evaluations – such as we are proposing here – have been used to evaluate the planning and managerial capabilities of nuclear operations, chemical processing facilities, hazardous materials handling centers and public health agencies with great success. We believe that adapting the experience gained from those situations with proven evaluation tools can measurably improve the quality and capability of response by your utilities to any conceivable crisis in the future.

With that I would be happy to take any questions or comments that might be offered.