

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

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| CAROLINA POWER & LIGHT COMPANY) | |
| and NORTH CAROLINA EASTERN) | Docket No. 50-400 OL |
| MUNICIPAL POWER AGENCY) | |
| (Shearon Harris Nuclear) | |
| Power Plant)) | |

ATTORNEY GENERAL'S PROPOSED FINDINGS
OF FACT ON CCNC CONTENTION WB-3
(DRUG ABUSE DURING CONSTRUCTION)

1. The first issue raised by CCNC Contention WB-3 is whether drug use at the Harris Plant was widespread. The Board finds that drug use at Harris was widespread based on the undercover drug operation conducted by the Wake County Sheriff's Department (WCSD) and the North Carolina State Bureau of Investigation (SBI). The Board relies on the evidence presented by the law enforcement officers who participated in the investigation.

2. On 17 October 1984 a meeting was requested by the WCSD. Attending the meeting were Sheriff Baker and Major Lanier of the WCSD, Agents Overton and Burch of the SBI, and Mr. King and Mr. Joyner of CP&L (Overton, p 2). Overton testified that Mr. King stated that they "...had discovered a substantial drug problem at the Harris plant..." and that something needed to be done (Overton, p 3). CP&L had requested that an undercover operation be conducted by the WCSD. Sheriff Baker further

requested that the SBI participate in the operation (Overton, p 3).

3. The undercover operation at the Harris plant began in November, 1984. The undercover operatives were Deputy Hensley of the WCSD and Agent Williams of the SBI. The two officers worked with a confidential informant (Burch, p 3). Deputy Hensley started working at the site the first part of November, 1984 and continued through the first part of January, 1985. He worked weekdays except for holidays (T p 9169). Hensley was instructed to use his cover as an employee at the plant to try and purchase drugs and to obtain information. The investigation resulted in the arrest of eight persons (T p 9173).

4. In addition, Deputy Hensley testified that he identified between fifty-one and fifty-three other employees involved in drug use (T pp 9173-9174). Also, he observed other employees involved with drugs but he was unable to identify them. He estimated this number to be approximately forty persons. Thus, he personally observed approximately one hundred employees either using or selling illegal drugs during the course of the investigation (T p 9175).

5. Deputy Hensley gave as an approximate estimate that he purchased seven grams of cocaine, four and a half ounces of marijuana, five grams of crystals and sixteen grams of hashish (T pp 9207 - 9208, 9277). He further testified that while at the plant he only worked the first shift (T p 9216). An incident was described by Hensley where he received information from an informer that two individuals were to enter the plant with a

large amount of marijuana. He knew the identity of the individuals but previously he had not been able to make a drug purchase from them (T p 9221). Lt. Self explained the circumstances relating to this incident as well. He stated that a plan was discussed which would have allowed the two individuals to enter the plant and Hensley would have attempted a purchase. But Lt. Self was not able to get to the plant because of another operation (T p 9223). The operation began to develop additional information from intelligence reports which indicated that there were other groups of employees involved with drugs which included several hundred people in various employment levels at the site but the operation was terminated before these employees were identified (Burch, p 5; T p 9177). As an example, Hensley obtained information that a supervisor was bringing pound quantities of cocaine into the plant. But the investigation ended before he could determine the person's identity (T pp 9182 - 9183). Hensley was able to recognize site employees involved in drug use who were in safety related work. This was based on observing the color of their hats (T p 9223).

6. Lt. Self explained that during the operation the informant told him that "CP&L" people were searching stash areas. As a result, Lt. Self informed Hensley not to reveal to anyone the whereabouts of stash areas inside the plant (T p 9220). Hensley described one stash area as being in cable trays. One was twenty feet above ground and the other was six or seven feet. When Hensley made one purchase, the employee climbed up and obtained the drugs from the cable trays (T p 9226). He

stated that on that occasion he purchased sixteen grams of hashish. Moreover, the employee had a total of a pound of hashish in this stash area (T p 9227).

7. Deputy Hensley testified that when he first arrived at the site his first buy was made after he had been there approximately one and a half hours. He explained that this was a "controlled buy" which meant that the informant made the actual purchase in Hensley's presence and under Hensley's supervision after he was given the money for the purchase by Hensley. The drug was cocaine and was purchased in the spread area (T pp 9229, 9297). Hensley disagreed with Mr. Joyner's testimony that no drug buys were made in the parking lot. Hensley testified that the last purchase he made was of an ounce of marijuana from a person in the Harris parking lot. The person was later arrested. Furthermore, Hensley observed six other plant employees make purchases of marijuana from the same person at this time. The other employees included electricians and a pipefitter (T pp 9230-9231).

8. Deputy Hensley explained that his work in the operation became limited because he had been in one particular group which worked during the day shift. He stated that it would not have been productive to keep making drug purchases from the same individuals. However, he testified that drugs were plentiful among this group. It was at this point that he discussed with the other officers the move to another shift in an attempt to identify as many individuals involved in drug use as possible (T pp 9232-9233). Hensley testified that there were

approximately sixty people in this group. The eight who were arrested were the employees from whom he made actual purchases. He explained that he could not go to others in the group to buy drugs because that would bring suspicion directed towards him. He stated, "[I]f you got a supply of drugs and it was readily available, you just can't ask people to (sic) associate all the time with each other for more drugs. It is just going to throw suspicion on you," (T p 9233). It was for that reason that Hensley believed that he needed to move to another group and not because he could not make additional drug buys from the group with which he was associated (T p 9234). Major Lanier noted that during the undercover operation it was learned that there were several groups of employees known by the informant to be involved in drug use. In each group there were certain suppliers. Due to the closeness of these dealers on the site, Hensley could not go to different dealers for purchases because it would arouse suspicion (T pp 9236-9237). Hensley further explained the closeness of the dealers. If one dealer was out of drugs, he could go to another dealer and obtain drugs and pay the other dealer at a later time. Hensley stated that the dealers even ran "specials" and because there were no price differences he could not go to different dealers or that would also arouse suspicion (T p 9236).

9. In Hensley's opinion had the operation continued he could have purchased more drugs on the plant site (T p 9239). Lt. Self testified that a plan was being formulated to move Hensley to the second shift (T p 9240). Agent Overton testified

as to the reasons for the termination of the undercover operation. He attended a second meeting at the WCSD. Also present were Sheriff Baker, Major Lanier, Lt. Self and Mr. King. Expanding the operation to the second shift was discussed. Overton informed King that plans were being made to bring into the operation a replacement for SBI Agent Williams. Sheriff Baker noted two factors that could cause problems in the operation. He had been informed that CP&L was going to bring drug dogs onto the site and that a major lay-off was planned. King stated that he had no choice as far as the drug dogs were concerned. Both Baker and Overton expressed concern over the use of the dogs (Overton, p 5). Overton stated that use of the dogs would hamper the operation. Sheriff Baker stated that he would not leave an agent inside the plant if drug dogs were to be used and Overton agreed that use of the dogs would create an unnecessary risk. Therefore, Baker and Overton made the decision to terminate the operation "...because of CP&L's insistence on the use of the drug dogs over the objections of the SBI and the WCSD," (Overton, p 5). Overton testified that the use of the dogs during the undercover operation would have created the "distinct possibility" that the undercover agents would have been endangered and that the "risk was too great," (Overton, pp 5-6).

10. Deputy Hensley testified that the use of drug dogs could have created a risk to his safety. He explained, "Well, if the dogs had been used in a situation where a certain group of people, including myself, knew a stash area or a quantity of drugs would be or who would have them, and if the dog picked up

on that, it could cause some fault (sic) as to an informer or something being into the plant which could have pointed back towards me," (T p 9224). Overton testified that based on his experience with agents working undercover, "...they are not as concerned about their personal safety as their supervisors are concerned about their personal safety. And very often an undercover agent will continue in an operation whereas a judgment has to be made by the supervisory (sic) to terminate that operation," (T p 9282).

11. Moreover, Overton testified that CP&L gave no valid reason for the use of the drug dogs (Overton, p 6). He further explained the risk of the introduction of drug dogs during an undercover operation, "Well, it would be very much like Deputy Hensley described, in that for no good reason, in my opinion anyway at that time, may cause some attention to be shown on both Agent Williams and Deputy Hensley in that they were the newest people in that group of people that were buying drugs . . . If their cover was exposed, then they could very - there could very well have been retaliation physically," (T pp 9307-9308).

12. In Overton's opinion the termination of the operation was premature and was not a success. An operation of this scope normally would have lasted six months (Overton, p 6). Lt. Self disagreed with the applicant's testimony that reported Lt. Self as saying the operation was to end on 2 January 1985. Lt. Self testified that the plan was to review the operation, not end it (T p 9201-9202).

13. In Deputy Hensley's opinion drug use at the Harris plant was widespread. He based his opinion on what he observed and on what he learned during the operation (T p 9246). He testified that there were eight arrests and that all of the defendants had pled guilty (T p 9240). Another fifty-three persons were identified and the identities were given to CP&L. He observed approximately another forty employees involved in drug use but was unable to obtain their identities. He suspected another hundred or so (T p 9241) and estimated that there were others at the plant using drugs (T p 9256). He explained that he learned of other groups involved in drugs as follows:

"Conversations with the people that I was dealing with on the site, just after getting to know them a little bit, striking up a conversation such as - well, you can get anything you want out here about any time you want it. Has it always been like this? Or, is this just an unusual - and from general conversation with them, most of them that had been there any length of time said that as long as they had been there they had already - they had access to drugs in this manner," (T p 9251).

14. The Board agrees with Agent Burch that the results of the undercover operation cannot be used to show that drug use at Harris was not widespread as the Applicant asserts (T p 9306). On the contrary, the Board agrees with Deputy Hensley and concludes that drug use at the plant was widespread. However, we are not able to determine the extent of the drug use. Even though the undercover operation lasted only a short period, was confined to one shift, and was terminated prematurely because of

the Applicant's insistence in using drug dogs; the results of the investigation which have been presented to the Board offer overwhelming evidence to support our conclusion that drug use at Harris was widespread.

15. Other issues raised by CCNC contention WB-3 are whether drug use at the plant affected the construction quality of safety-related systems and whether Applicant has failed to reinspect all safety related work by known drug abusers. The Board finds that widespread drug use has affected construction quality of safety-related systems and that the Applicant has failed to reinspect safety-related work done by known drug abusers.

16. Marijuana, cocaine and methamphetamine (speed) are the drugs most often abused by Harris employees. Tr. 10,036-39. Marijuana produces an intoxicated state, the most notable effects of which on work performance come from the drop in motivation and memory. Cocaine and methamphetamine use results in poor concentration on a task because of easy distractability or inappropriate preoccupation to a particular detail of the task to the neglect of the total task. Tr 10,036-39; Dupont at 4, 9.

17. Applicant has not reinspected the work of 218 craft workers it has terminated for suspected or confirmed drug use. Applicants Exhibit 51 at Chart II-2. Applicant relies instead on

what it contends is the effectiveness of its QA program to have caught any errors caused by drug-using craft personnel.

18. 10 CFR Part 50, Appendix B requires that a QA program must ensure "adequate confidence" that the plant will perform satisfactorily. However, by its own admission, Applicant has terminated 27 QA personnel for suspected or confirmed drug use. Applicants' Exhibit 51 at Chart II-2. Applicants have only reinspected a sample of the work done by these 27 quality inspection personnel. The Board finds that this sample reinspection does not insure "adequate confidence" that the plant will perform satisfactorily.

19. Indeed, the Applicant's reinspection of drug abusing QA personnel was spotty at best. For example:

A. The work of three of these QA personnel which related to Radiographic Examination (RT) was not reinspected and only 284 items of their work on liquid penetrant and magnetic particle examinations were reinspected.

B. Sample reinspection of the work of seven drug using CI inspectors who inspected cable pulls or cable terminations and drilled-in expansion anchors indicated an overall acceptance rate of 99.3%. This high rate suggests that the reinspection sample size was too small, or the reinspection was faulty, or the reinspectors were drug users themselves.

C. Samples of the work of eight of fourteen QC inspectors terminated for confirmed or suspected drug use were reinspected. Again the overall acceptance rate on sample reinspection was an extremely high 99.7%. No explanation has been given why none of the work of six of these QC inspectors was reinspected.

D. The work of two drug-terminated QC inspectors who field-tested concrete and performed sieve analysis, grout testing and caulk weld inspections were never reinspected.

E. Very small samples were reinspected of the work of three drug-terminated QC personnel who inspected expansion anchors: respectively 8%, 14% and 10% for an overall sample size of 10%. Again the sample reinspection indicated an extremely high proficiency rate of 99.9%, suggesting a sample size that was too small or a flawed reinspection program. Indeed the work of two of these QC personnel on grout placement and concrete rebars was not reinspected at all.

F. The work of a drug-terminated final quality inspector who performed final system walkdowns was not reinspected.

20. A search of the NRC's own records of inspections done throughout the history of this construction project will reveal that Applicant has had persistent problems with QA. For example, in 1980 the Applicant was corrected for improper training of QA

personnel; in 1982, defective shop welds defied four levels of inspection (in the shop, upon delivery to the yard, upon delivery to the craft crew and upon inspection by QA) before being discovered and corrected by NRC personnel.

21. These facts coupled with the unusually high level of proficiency on reinspection of the work of known or suspected drug using QA personnel suggests that the Applicant's reliance on sample reinspection of selected QA personnel terminated for drug usage is misguided. Widespread drug use of the extent evidenced at Harris Nuclear Plant does not ensure "adequate confidence" the plant has been constructed safely or will perform safely and adequately.

CONCLUSIONS OF LAW

22. As reflected in the foregoing opinion on CCNC Contention WB-3 the Board has resolved contested safety matters in favor of the Intervenor.

23. In reaching this decision, the Board has considered all the evidence submitted by the parties and the entire record of this proceeding, consisting of the Commission's Notice of Hearing, the pleadings filed by the parties, the transcripts of the hearing and the exhibits received into evidence. All issues and proposed findings presented by the parties, and not addressed in the Board's decision, are deemed to be without merit or

unnecessary to the decision. The Board's findings of fact are supported by reliable, probative and substantial evidence in the record.

It is therefore ORDERED

24. Applicants must reinspect all of the work of the 27 QA personnel it has terminated for suspected or confirmed drug use, must reinspect 75% of the work done by 218 craft personnel it has terminated for known or suspected drug use and must reinspect a random sample of 30% of all safety related construction.

Respectfully submitted this 13th day of December, 1985.

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| |) | |
| (Shearon Harris Nuclear Power |) | |
| Plant) |) | |

CERTIFICATE OF SERVICE

I hereby certify that a copy of "Attorney General's Proposed Findings of Fact on CCNC Contention WB-3 (Drug Abuse During Construction)" was served this 13th day of December 1985, by deposit in the U. S. Mail, first class, postage prepaid, to the parties on the attached Service List.


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