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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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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

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NRC STAFF PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW ON CONSERVATION COUNCIL OF NORTH CAROLINA'S
CONTENTION WB-3 (DRUG ABUSE DURING CONSTRUCTION)

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December 20, 1985

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2) The Applicants and Staff opposed admission of the proffered contention as being late without good cause, as lacking a showing of CCNC being able to contribute to the record, and as being without basis and

specificity. ^{1/} The Licensing Board subsequently modified and admitted the contention. See Memorandum and Order (Ruling on Contentions Concerning Diesel Generators, Drug use and Harassment at the Harris Site) at 5 (March 13, 1985). The Board deleted reference to alcohol in the contention and broadened it to cover all site workers. As modified by the Licensing Board, CCNC Contention WB-3 states as follows:

Drug abuse at the Harris Plant is wide-spread (see the attached newspaper article for details and basis). Employees under the influence of drugs are less able to follow proper procedures and tech specs for the installation of electrical systems, pipe-fitting, and other safety-related work. Applicants' management has failed to control drug use during the construction and further, has failed to reinspect all safety-related work done by known drug abusers.

The Licensing Board set May 1, 1985 as the last day to serve interrogatories and as the date by which all other discovery was to be completed. Id. at 8.

3) Discovery on CCNC Contention WB-3 has included: the NRC Staff's discovery requests to CCNC of April 24, 1985, and CCNC's responses of May 29, 1985; Applicants' discovery requests to CCNC of May 1, 1985, and CCNC's responses of May 24, 1985; CCNC's discovery requests to Applicants of May 1, 1985, and Applicants' responses of May 20, 1985.

^{1/} Applicants' Response to CCNC's Request for Admission of New Contention WB-3 (Drug Use During Construction), February 6, 1985; NRC Staff Response in Opposition to Conservation Council of North Carolina's Motion to Admit Proffered Contention WB-3 Regarding Drug Use, February 7, 1985.

4) On July 12, 1985, the Applicants filed a motion for summary disposition of WB-3. ^{2/} That motion was accompanied by affidavits of Messrs Joyner, Bensinger, Pannill, Flowers, King, Plueddemann and Hindman, employees of Applicants or their contractors, or consultants, describing the undercover operation and Applicants' drug detection and control programs. Also attached was an affidavit of Mr. Chiangi as to the effectiveness of the Applicants' drug programs. On July 31, 1985 the State of North Carolina, through its Attorney General, petitioned to intervene ^{3/} under 10 C.F.R. § 2.715, responded in opposition to the motion for summary disposition, and filed an affidavit of Shirley L. Burch (Burch Affidavit) a member of the SBI. Ms. Burch's affidavit varied as to some of the facts of the undercover operation as set forth in the affidavit of Applicants' Mr. King. Ms. Burch was the immediate supervisor of Mr. Williams, the SBI undercover agent at the Harris site. She alleged also to have consulted personnel at the sheriff's department prior to making her affidavit. The Board convened a telephone a telephone conference call among the parties and the Attorney General on August 5, 1985. The Staff expressed surprise at the information in Ms. Burch's affidavit and requested time to see the Applicants' response before the Staff took a position on the motion for summary disposition (Treby Tr. 8182, 8193).

^{2/} "Applicants' Motion for Summary Disposition of CCNC Contention WB-3 (Drug Abuse During Construction)" (July 12, 1985).

^{3/} "Petition To Intervene By The Attorney General of North Carolina" (July 31, 1985).

5) CCNC filed in opposition to the Applicants' motion for summary disposition on September 6, 1985 ^{4/} attaching an affidavit dated September 6, 1985 of Patty Miriello. Miss Miriello formerly was employed at the site. She alleged that she saw drug use by site employees. Being presented with this plethora of charge, counter charge, and denial, the Licensing Board convened a telephone conference call among the parties, including the State of North Carolina, on September 13, 1985. There the Licensing Board denied the Applicants' motion for summary disposition (Tr. 8224). The Licensing Board determined to entertain evidence on the following issues: (1) whether drug use is widespread, ^{5/} (2) whether the Applicants have taken appropriate actions to control drug use (Tr. 8232) and what action the Applicants have taken in regard to workers suspected of involvement with drugs (Tr. 8230). The Licensing Board rulings were formalized in an Order issued September 18, 1985. ^{6/} There the Board determined to bifurcate the contention, hearing first how widespread the drug use was, the Applicants' detection and prevention programs, the CCNC affidavit of Miss Miriello and, the undercover operation -- the affidavit of Ms. Shirley L. Burch. A second evidentiary session would be held on what actions the Applicant took in regard to a site worker suspected of involvement with

^{4/} "Conservation Council's Response to Applicants' Motion For Summary Disposition of Contention WB-3" (September 6, 1985).

^{5/} The NRC Staff informed the Licensing Board that it had little information on how widespread drug use was at the site (Tr. 8233).

^{6/} "Order Concerning Time, Place and Other Matters Related to Hearing on Drug use Contention" (September 18, 1985).

drugs. This second session would consider actions taken since issuance of the Construction Permit.

6) The first session of hearings was held in Apex, North Carolina, on September 30 and October 1 through 3, 1985. Direct evidence was presented by Applicants (ten witnesses), CCNC (four witnesses), ^{7/} the Attorney General of North Carolina (three witnesses), and the NRC Staff (four witnesses). The second session of hearings was held in Raleigh, North Carolina, on November 12, 1985. Direct evidence was presented only by Applicants (six witnesses) and the NPC Staff (two witnesses). The record compiled on CCNC Contention WB-3 is both extensive and thorough. Great indulgence was given by the Licensing Board to the parties, their counsel and witnesses, to develop whatever case they had. ^{8/} The record on this contention consists of 1224 pages of transcript of the hearings and over a thousand pages of prefiled written testimony and exhibits. The Board emphasizes at the beginning of this fourth partial initial decision that no party, no witness, and no graphic evidence has disclosed a single defect in the construction of the Harris facility of safety significance due to drug related activity and there is no evidence in this record that any single worker at the site was under the influence of drugs while working and thereby less able to perform safety-related

^{7/} Three of the CCNC witnesses were employees of the Wake County Sheriff's Office (WCSO), who appeared in compliance with a subpoena issued by the Board at CCNC's request.

^{8/} Mr. Wells Eddleman, an intervenor although not a sponsor of WB-3 was present throughout all hearings and was extended the rights of a party, i.e., the right to cross-examine, to make motions, and to engage in Board-Counsel discussions.

work. The total absence of any evidence to support these allegations contained in CCNC Contention WB-3 is significant.

II. THE REGULATORY FRAMEWORK

7) The NRC has no rules, regulations, or policy guidelines directly regarding control and prevention of drug use for holders of construction permits. The Applicants are holders of a Construction Permit for Unit One. Current NRC rules pertaining to drug abuse at operating nuclear power reactors include: (i) the physical and mental qualifications criteria for security personnel described in Appendix B to 10 C.F.R. Part 73 which prohibit individuals with drug addiction from performing security duties, and (ii) the physical and mental qualifications criteria for licensed reactor operators described in 10 C.F.R. § 55.11, which require that there be no conditions that would impair judgment or motor coordination. This would obviously include drug abuse. Those criteria are also reflected in Regulatory Guide 1.135, Rev. 1 1979, "Medical Evaluation of Nuclear Power Plant Personnel Requiring Operator Licenses" and ANSI N546-1976, "American National Standard Medical Certification and Monitoring of Personnel Requiring Operator Licenses For Nuclear Power Plants." The ANSI standard N546-1976 specifically identifies drug dependency as a disqualifying condition. Similar criteria for independent spent fuel storage facility operators exist in 10 C.F.R. § 72.93. Criteria described in 10 C.F.R. § 10.11(a)(10) and (11), which applies to licensees, contractors and NRC employees, would preclude a drug abuser from obtaining a security clearance. However, use of this provision by the nuclear power utilities is limited and has little or no

application to the issues raised by WB-3. Similar criteria in the proposed 10 C.F.R. § 73.56, 49 Fed. Reg. 30730, August 1, 1984, "Proposed Insider Safeguards Rules" would preclude a drug abuser from having unescorted access to an operating power reactor. IE Circular 81-02, "Performance of NRC-Licensed Individuals While On Duty" February 9, 1981, alerts licensees to the need to establish management controls and a professional environment which would prohibit activities such as drug use. IE Information Notice 82-05, "Increasing Frequency of Drug-Related Incidents" dated March 10, 1982, reported an increasing frequency of drug related incidents and announced IE's initiation of actions to address the problem on a generic basis. NUREG/CR-3196, "Drug and Alcohol Abuse: The Bases for Employee Assistance Programs In The Nuclear Utility Industry", issued in July 1983, describes the nature, prevalence, and trends of drug abuse and recommends programs that could minimize drug abuse in the nuclear industry. Criterion II of Appendix B to 10 C.F.R. Part 50 describes a need to assure suitable proficiency of personnel as part of the quality assurance program; while it does not specifically require a fitness for duty program, the Staff expects applicants to have programs to assure that drug abuse does not impair proficiency or otherwise negate the effectiveness of the required quality assurance program. Other than as described above no policy or standard establishes an NRC position on

drug abuse at nuclear power reactors, either under construction or operating. (Bush at 3, 4, and 5). ^{9/}

8) The Commission has considered measures to provide reasonable assurance that a person who is under the influence of drugs, or who

^{9/} The Applicants, Staff, CCNC and the Attorney General all prefiled written testimony. It is identified and will be cited as set forth in this footnote. APPLICANTS: "Applicants' Testimony of Harold R. Banks, George L. Forehand and Thomas W. Brombach on Evaluation and Reinspection of Work Performed by Employees Implicated in Possible Drug Activity (CCNC Contention WB-3)" ff. Tr. 10,077 (hereinafter "Reinspection Testimony"); "Applicants' Testimony of Harold R. Banks and Roland M. Parsons on the Construction Quality Assurance Program (CCNC Contention WB-3)" ff. Tr. 10,071 (hereinafter "QA Testimony"); "Applicants' Testimony of Peter B. Bensinger, John D. Ferguson, Garry W. Flowers and A. Peid Pannill on Drug Abuse Control Procedures and Training (CCNC Contention WB-3)" ff. Tr. 8326 (hereinafter "Program Testimony"); "Applicants' Testimony of William J. Hindman, Jr., Michael W. King, D. Glenn Joyner, Michael L. Plueddemann and Peter B. Bensinger on the Undercover Drug Investigation (CCNC Contention WB-3)" ff. Tr. 8471 (hereinafter "Undercover Testimony"); "Applicants' Testimony of William J. Hindman, Jr., Michael W. King, D. Glenn Joyner and Peter B. Bensinger on the Assessment of Employee Drug Activity (CCNC Contention WB-3)" ff. Tr. 8893 (hereinafter "Prevalence Testimony"); "Applicants' Testimony of Harold R. Banks, Roland M. Parsons, George L. Forehand and Thomas W. Brombach on Evaluation and Reinspection of Work Performed by Employees Implicated in Possible Drug Activity (CCNC Contention WB-3)" ff. Tr. 10,077 (hereinafter "Reinspection Testimony"); "Applicants' Testimony of Dr. Robert L. DuPont, Jr. on the Effects of Employee Drug Use (CCNC Contention WB-3)" ff. Tr. 9994 (hereinafter "DuPont"); "Applicants' Testimony of Eugene F. Trainor on the Capabilities and Performance of Applicants' Construction QA Program (CCNC Contention WB-3)" ff. Tr. 10,077 (hereinafter "Trainor"); and "Applicants' Testimony of Dana B. Mackonis and Kenneth A. Mathias on Use of Drug Detection Dogs (CCNC Contention WB-3)" ff. Tr. 8993 (hereinafter "Detection Dog Testimony").

CCNC: "Testimony of Patty Miriello for Conservation Council on Contention WB-3 (Drug Abuse During Construction)" ff. Tr. 9084 (hereinafter "Miriello").

is otherwise unfit for duty, is not allowed to constitute a threat to public health and safety at an operating nuclear power reactor. Accordingly, on August 5, 1982, the Commission published a proposed rule on fitness for duty, 47 Fed. Reg. 33980, August 5, 1982. By letter dated July 3, 1985, the Nuclear Utility Management And Human Resources Committee (NUMARC) informed the Commission that: (i) all 55 nuclear utilities have committed to have a basic fitness for duty program; (ii) the Edison Electric Institute (EEI) agreed to review, revise, and reissue their guidelines; (iii) Institute of Nuclear Power Operations (INPO) is strengthening its evaluation of utility implementation through development of new performance objectives and criteria for plant and corporate evaluations; and (iv) each utility will upgrade its program to meet the improved standards and criteria. The EEI published, in early August 1985, a revised guideline for developing

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

ATTORNEY GENERAL: "Statement of Donald Williams" ff. Tr. 9274 (hereinafter "Williams"); "Direct Testimony of C. J. Overton, III" ff. Tr. 9274 (hereinafter "Overton"); and "Affidavit of S. L. Burch" ff. Tr. 9224 (hereinafter "Burch").

NRC STAFF: "Testimony of Loren L. Bush, Jr. concerning CCNC Contention WB-3" ff. Tr. 8653 (hereinafter "Bush"); "Testimony of Paul Fredrickson and Richard Prevatte for the NRC Staff regarding Contention WB-3's Allegation concerning Reinspection of Work Performed by Persons Suspected of Drug Abuse" ff. Tr. 10,166 (hereinafter "Fredrickson-Prevatte"); and "Testimony of Francis J. Long, William J. Tobin and Richard L. Prevatte on CCNC Contention WB-3 (Drug Use During Construction)" ff. Tr. 8653 (hereinafter "Long, et al.").

policies in this matter. ^{10/} At this point, it would appear that this industry-developed standard will be used voluntarily at both operating power reactors and those under construction. The guide is not intended to be mandatory or prescriptive. Although the EEI Guide has not formally been adopted by the Commission, the Staff expects the industry to use the EEI Guide in developing a drug abuse program. ^{11/} The EEI Guide was used in the formulation of the Applicants' drug prevention program. (Bush at 6).

9) The NRC in order to issue an operating license must be able to make a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety. 42 U.S.C. §§ 2133(d), 2232(a); 10 C.F.R. § 50.47(a)(3)(i); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1345 (1983), aff'd, San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1319-21 (D.C. Cir. 1984), partial rehearing granted on other grounds, 760 F.2d 1320 (1985); Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983), reconsideration denied, ALAB-750, 18 NRC 1205 (1983), as modified, ALAB-750A, 18 NRC 1218 (1983). In fulfilling its statutory responsibilities the NRC requires as a prior condition to receiving a construction permit, that an applicant have a quality assurance program which is approved by the Staff. Execution of the construction permittee's quality assurance program which is required by Appendix B to 10 C.F.R. Part 50, is

^{10/} "EEI Guide to Effective Drug and Alcohol Fitness For Duty Policy Development" (Rev. August 1985).

^{11/} Bush-Staff at 4, ff. Tr. 653. Bensinger-Applicants Tr. 8778.

designed to eliminate the possibility that construction defects of potential safety significance will go undetected and therefore unrectified. See Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-802, 21 NRC 490, 492-93 (1985). CCNC Contention WB-3 postulates construction defects caused by impaired employees under the influence of drugs.

III. FINDINGS

I. Applicants' Programs For Control of Illegal Drug Activity

A) Applicants

10) The Applicants put on a panel consisting of Peter B. Bensinger, a consultant, John D. Ferguson, Director-Personnel Relations at Harris, Gary W. Flowers, Manager of Corporate Security for Daniel International Corporation and A. Reid Pannill who was Daniel's personnel manager at the Harris site between 1982 and August 1985. (Tr. 8326) Mr. Bensinger's statement of qualifications follows transcript page 8326. During the course of the hearing, additional details of Mr. Bensinger's qualifications were elucidated, see, Tr. 8469, 8599, 8600, 8625, 8777. From 1976 through June 1981 Mr. Bensinger was Administrator of the United States Drug Enforcement Administration. Since 1981 he has actively been a consultant to the private and public sectors on the control of illegal drugs. The Board finds that Mr. Bensinger is a leading expert in contemporary society in illegal drug activity and his testimony is given great weight. The Board finds Messrs. Ferguson, Flowers and Pannill to be knowledgeable and experienced in private corporation drug control programs and their evidence is reliable and substantial.

11) CP&L employees at the Shearon Harris site are subject to CP&L's Drug and Alcohol Abuse Statement of Practice. The Statement, minus the provisions related to alcohol abuse, is as follows:

The use, possession, or sale of narcotics, hallucinogens, depressants, stimulants, marijuana, or other controlled substances by an employee while on Company business or on Company property will result in disciplinary actions, including possible termination.

Any other use, possession, or sale of narcotics, hallucinogens, depressants, stimulants, marijuana, or controlled substances by an employee that may adversely affect the employee's job performance, or that may reflect unfavorably upon public or government confidence in the manner in which the Company carries out its responsibilities, may result in disciplinary action, including possible termination.

This statement of practice does not apply to medication prescribed by a licensed physician and taken in accordance with such prescription.

In order to provide guidance for assuring that Company practice on drug and alcohol abuse is adhered to at nuclear power plant sites, CP&L has adopted a Drug and Alcohol Interdepartmental Procedure. The Procedure prescribes the responsibilities of Department/Nuclear Project Managers, Manager-Employee Relations, and Department/Nuclear Project Section Managers. ^{12/} Program Testimony at 8 and 9).

12) Applicants for employment with CP&L at the Shearon Harris site are fully informed of the Company's Drug and Alcohol Abuse Statement of

^{12/} A copy of the procedure was received into evidence as Applicants' Exhibit 30.

Practice and related Drug and Alcohol Interdepartmental Procedures. They are advised that a thorough five-year background investigation will be conducted, that drug screening procedures are a part of the required pre-employment physical examination, and that a professional evaluation using the Minnesota Multiphasic Personality Inventory (MMPI) is a part of the total preemployment procedure. Applicants are told that if the drug screen indicates the presence of drugs or controlled substances, not obtained and used according to a valid prescription, they will not be considered further for employment. Also, if the MMPI indicates a background of or tendency toward drug or alcohol abuse or aberrant behavior in the opinion of professional advisors to the Company, they may not be considered further for employment. (Program Testimony at 9).

13) Once employed, CP&L personnel assigned to the Harris site receive an instructional program entitled "Drug and Alcohol Abuse Orientation for CP&L Employees," presented by Employee Relations and the Harris Training Unit. The instruction familiarizes employees with CP&L's Drug and Alcohol Abuse Practice and Procedures, the adverse impact of drug and alcohol abuse, and CP&L's Employee Assistance Program. Each employee is given the CP&L "Drug and Alcohol Abuse Reference Manual." A copy of the Manual was received in evidence as Applicants' Exhibit 31. The Manual includes the Statement of Practice, a message from the Chairman/President of CP&L, and a summary of the Drug and Alcohol Interdepartmental Procedures. The Manual advises the employee that the Company may undertake announced or unannounced inspections, investigations and searches for illegal drugs and controlled substances. The Manual states that "the results of such actions may include a request

that an employee have a Company-approved medical examination which will include a drug screen" and that "any employee who refuses to cooperate with a properly authorized inspection, investigation or search may be subject to disciplinary action, including possible termination." The last page of the Manual is detached and retained as the employee-signed record of participation in the orientation, of the employee's agreement to abide by the Statement of Practice and related Procedures, and of the employee's understanding that compliance with the Statement of Practice and related Procedures is required for continued employment with CP&L. (Program Testimony at 9 and 10).

14) A urinalysis drug screen test is used by CP&L for applicants for employment at the Harris site, and for site employees suspected of involvement in drug activity. Each employee consents to this examination as a condition of employment. The urine specimen is collected by a local physician and, pursuant to an established written procedure designed to assure sample authenticity, is delivered to CompuChem Laboratories, Research Triangle Park, North Carolina, with whom CP&L has a business agreement to perform urinalyses for the detection of drug use. The drug classes included in the CompuChem analysis are amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, methadone, methaqualone, opiates, and phencyclidine. Each urine sample submitted to CompuChem first undergoes an Enzyme Multiplied Immunoassay Technique (EMIT) qualitative analysis. All positive EMIT analyses are confirmed by Gas Chromatography/Mass Spectroscopy (GC/MS) quantitative analysis. This test program ensures that, if a drug is present, it will

be detected by the EMIT test, and the quantity confirmed through the GC/MS analysis. (Program Testimony at 10 and 11).

* 15) CP&L has imposed, by contract amendment, a drug and alcohol abuse policy upon contractors at the site. A copy of the article incorporated into these contracts was received into evidence as Applicants' Exhibit 32. It requires the Contractor to communicate to its employees CP&L's drug abuse policy, CP&L's right to search on its property, and CP&L's discretion to remove from the site any employee who does not cooperate with or is found to be in violation of CP&L's drug abuse policy. (Program Testimony at 11).

16) CP&L has a drug awareness training program for CP&L managers and supervisors (including first-line supervisors, i.e., foremen) at the Harris site designed to prepare them to recognize drugs and drug-related behavior, and to understand their responsibilities when such substances or behaviors are observed or reported on the job. The supervisor is responsible for reporting any information on suspected drug activity, for removing from the job any employee having possession of or under the influence of drugs, and for initiating disciplinary action in accordance with the provisions of the Company's Drug and Alcohol Abuse Statement of Practice. The drug awareness training program enables supervision to carry out these responsibilities effectively. In developing its drug and alcohol abuse education efforts, CP&L utilized the expertise and guidance of numerous individuals and organizations with valuable experience, including other utility companies, Federal and local law enforcement personnel, the academic community, and consulting firms with national experience in the prevention of drug and alcohol abuse. (Program Testimony at 11 and 12).

16) CP&L supervisors and managers at the Harris Plant have attended a "Drug and Alcohol Workshop for Supervisors," initially presented by the Plant Manager or his designee, the plant personnel representative and/or a designated instructor from the Employee Relations Department. This program provides the participants with a comprehensive review of CP&L's Drug and Alcohol Abuse Practices and Procedures and of their supervisory responsibilities under those Practices and Procedures. Participants are then provided with the skills necessary to implement the Practices and Procedures. Subsequently, this training was incorporated into a "Workshop in the Assessment of Aberrant Behavior," a 12 to 16-hour course presented by Management Consultants of Chapel Hill. That course includes 4 hours of instruction devoted to drug and alcohol abuse problems, practices and procedures. Each manager and supervisor receives, as a part of the drug awareness training program, the CP&L Supervisor's Reference Manual, Drug and Alcohol Abuse. A copy of this Manual was received into evidence as Applicants' Exhibit 33. This manual illustrates the scope and content of the training provided. In addition to the Practices and Procedures, the manual describes drugs of common abuse (including identification of the drug, method of use and signs/symptoms of use), guidance on observing and documenting changes in employee behavior, guidelines for administering CP&L's policy on drug abuse, behavior and job performance warning signs, a check-list for observing employee behavior, and guidelines for conducting a disciplinary interview. (Program Testimony at 12).

17) In addition to this on-going and repeated (for new supervisors/managers) training program, CP&L in 1984 gave special attention to drug abuse control. On August 1, 1984, CP&L management gathered for a

briefing on drug and alcohol abuse control, presented by Mr. Bensinger, who is one of the foremost experts on drug and alcohol abuse in the United States. Subsequently, refresher training on drug and alcohol abuse was conducted by Mr. Bensinger's associates and CP&L personnel at the Harris site in August 1984, for CP&L supervisors. A description of this refresher training was received into evidence as Applicants' Exhibit 34. (Program Testimony at 12 and 13).

18) In a further effort to remind personnel of the importance the Company attaches to its drug and alcohol abuse practices and procedures, CP&L employees at the Harris site, as well as contractor personnel who attend the routine safety meetings, recently received a videotape "Drug and Alcohol Abuse Refresher Training" session presented by Mr. Edward E. Utley, CP&L Executive Vice President. A transcript of the video tape was received into evidence as Applicants' Exhibit 35. (Program Testimony at 13).

19) Applicants' Director-Personnel Relations for the Harris site testified that CP&L vigorously enforces its drug abuse policy. Its consistent practice has been to encourage employees to cooperate with the implementation of that policy, but to terminate employees who violate it. (Tr. 8405; Program Testimony at 13).

20) Daniel's Manager of Corporate Security and its Group Personnel Manager of the Process Group testified that all prospective Daniel employees at the Harris site are subjected to pre-employment background verification, which includes, with respect to previous employment, confirmation of the dates of employment, job classification, performance rating and the reason(s) for termination. Any criminal records listed on the employment application are reviewed, and incidents involving drug-related

activity in the applicant's background are viewed as grounds for denial of employment. (Program Testimony at 13).

21) The employees of Daniel and of Daniel's subcontractors represent roughly 70 percent of the site work force. (Program Testimony at 14).

22) Daniel's drug policy at the Shearon Harris site is governed by two procedures: one which applies to the Technical Services Division (employees involved in quality confirmation roles in Quality Control or Construction Inspection) and another for all other employees. Procedure TSD-SH-207, "Security Actions/Illegal Drugs and Other Contraband Materials," provides that employees are forbidden to use, sell, possess or be under the influence of illegal drugs while on Daniel or CP&L property and that violation of this prohibition is cause for immediate discharge. The procedure states that Daniel may take any of the following steps while employees are on Daniel/CP&L property: observe actions of employees; counsel employees; search employees' personal items, automobiles or persons; require searches with canines; require drug screen urinalysis testing. If the employee refuses a search, he/she is immediately discharged. The procedure prescribes the steps to be taken, and the action responsibilities, to implement the policy. A copy of the Technical Services Division procedure was received into evidence as Applicants' Exhibit 36. Procedure DDC-PC-510, "Security Actions/Illegal Drugs and Other Contraband Materials," governs other Daniel employees and has provisions similar to the TSD procedure just described. A copy of DCC-PE-510 was received into evidence as Applicants' Exhibit 37. In addition, by memorandum of December 26, 1984, to all Daniel/Davis employees from C.C. Wagoner, CP&L's Project General

Manager for Harris, the drug policy was restated and supplemented to provide that "[e]ffective January 10, 1985, the consent to search provisions will include urinalysis testing at the discretion of senior project management when probable cause has been established that an employee has violated the site drug and alcohol abuse policy." A copy of Mr. Wagoner's memorandum was received into evidence as Applicants' Exhibit 38. (Program Testimony at 14 and 15).

23) Daniel employees are introduced to its drug policy for the Harris site in several ways. All new employees and all employees transferring from other Daniel worksites are introduced to the drug and alcohol policy through an employee orientation. (Program Testimony at 15).

24) As a part of the orientation, the presenter reads and reviews the drug policy letter of the Daniel Construction Company and reemphasizes the Company's commitment to the enforcement of this policy. A video orientation is provided in which there is a clear and specific discussion of the drug and alcohol policy. In addition, each employee is given an employee handbook to read during the orientation period and before he/she begins the job. The handbook states that incapacitation through alcohol, drugs, or other substances, and the possession of dangerous weapons, alcohol or illegal substances on company property, are offenses which can lead to an immediate involuntary termination. After the employee has read the employee handbook, he/she is required to fill out an affidavit certifying that he/she has received a copy of the handbook, has read it, and will abide by all of its rules and regulations. This certification becomes a part of the employee's personnel file at the site. (Program Testimony at 15 and 16).

25) In addition, all site employees are reminded of the drug and alcohol policy through posters and bulletin board items throughout the worksite. Supervisory emphasis is also given to this topic at weekly safety meetings or other meetings during which the supervisors may be meeting with their employees. (Program Testimony at 16).

26) Daniel supervisors are responsible for reporting suspected drug activity and for taking immediate action if drug activity is observed. The supervisors receive special training on drug awareness and Daniel's policy so that they can better fulfill those responsibilities. Supervisors are given the written drug policy which appears in a Personnel-prepared Supervisor's Handbook. The drug awareness training provided to supervisors familiarizes the participants with Daniel's drug policy and how to implement it. Supervisors are taught how to recognize drugs with high abuse rates (e.g., marijuana, cocaine and different forms of speed), how to recognize the symptoms of drug abuse in an employee, and the supervisor's role in carrying out the policy. This training program was developed from information provided by Federal and local law enforcement agencies, medical doctors and pathologists, and the training content has been reviewed for accuracy by law enforcement experts and medical doctors. The presentation is made by an instructor on-site using slides, static displays of drug paraphernalia, and a drug display kit which was commercially purchased. A general outline of the information presented in the Supervisory Drug Awareness Program was received in evidence as Applicants' Exhibit 33. In addition, a copy of "Controlled Substances: Use, Abuse and Effects," prepared by the U.S. Drug Enforcement Administration is provided to the supervisors. (Program Testimony at 16 and 17).

27) Daniel site Industrial Relations representatives conduct active surveillance for visible drug activity and receive reports from employees on known or suspected drug activity. Daniel provides any information it receives or develops on known or suspected drug activity to CP&L. Daniel employees may also use the project Quality Check program and the Daniel Open Door Policy to report drug information. Daniel employees have received instruction on the use and availability of the Quality Check program as an avenue for reporting any alleged problem on a confidential, or even an anonymous, basis. The employees are also encouraged to use the Daniel Open Door Policy, which is discussed with each new hire and is the subject of posters throughout the project, to raise problems with their supervision and, if not satisfied, to contact further levels of management. (Program Testimony at 17).

28) Consistent with CP&L's practice for its employees involved in quality confirmation roles, Daniel personnel in such positions (Quality Control or Construction Inspection) undergo urinalysis drug screen testing whenever information on suspected drug use or other drug activity is provided Daniel. Urinalysis testing is performed on other Daniel employees when probable cause, through other means of drug detection, has been established to suspect drug activity. Daniel utilizes CompuChem laboratories, as does CP&L, to perform the urinalysis drug screens. (Program Testimony at 18).

29) Bensinger, DuPont & Associates, (Peter B. Bensinger and Robert L. DuPont) has provided policy consultation to CP&L and provided supervisory training to all CP&L management and supervisory personnel at their nuclear facilities and headquarters locations. (Program Testimony at 18).

30) The Applicants' witnesses were extensively cross-examined by the parties, the Attorney General, Mr. Eddleman and the Board. Cross-examination did little more than simply confirm the prefiled direct written evidence of Applicants with minor details added in some instances, such as transcript page 8358 discusses that no blood tests are now used although the Applicants have the right to do so. Transcript page 8359 adds detail to the procedure for taking a urine specimen. The cross-examination brought out that in 1984 and 1985 Applicants upgraded their drug programs Tr. 8349, 8396. Transcript pages 8362-5 detail the length of time that illegal drugs remain detectable in the human body. The cross-examination sometimes provides a somewhat fuller description of the Applicants' various drug programs, but does not alter the basic structure described, supra. CCNC did not present any direct case to support its contention in regard to Applicants' programs; no defect in those programs was identified by CCNC; and, no recommendations or suggestions for improvement were made by CCNC during the course of the hearing.

B) The NRC Staff

31) As stated previously, though the NRC has no regulatory requirements relating to illegal drug use at a construction site, the Staff expects the industry to apply the EEI Guide to all construction and operating sites (Bush-Staff at 6, ff. Tr. 8653). Mr. Bensinger, who is a consultant to Edison Electric Institute on the EEI Guide confirms that the industry is to apply the Guide to all construction and operating

sites (Tr. 8777). Since the EEI Guide is expected to be the minimum standard for the industry, Mr. Loren L. Bush of the Staff compared the EEI Guide recommendation with Applicants' programs and concluded that the Applicants' programs meet or exceed all key elements recommended by the EEI Guide (Bush at 9). Mr. Bensinger confirmed this (Program Testimony at 20; Tr. 8326 and 8777-8779). Mr. Bush's qualifications are set forth in his written testimony. He is the Staff's leader in developing Staff policy in regard to the proposed fitness for duty rule and upon matters relating to drugs. We find him well qualified by training and experience to address drug programs.

32) The EEI Guide describes the key elements of a drug fitness for duty program, and is provided as a reference source and guide for electric utilities to use in the continued development of their programs. The Guide is intended to set forth a basic framework upon which the utility would develop a comprehensive program tailored to their situation and needs. The key program elements described in the guide are:

1. Written policy

- ° This is the most fundamental element. It ensures that everyone from the company president to the laborers clearly understand what is expected of them and what consequences may result from violation of company policy.

2. Top management support

- ° It is essential that the Chief Executive Officer and Senior Management involve

themselves in the creation and implementation of the drug program and keep themselves informed as to the program's effectiveness on a continuing basis and to see that company policy is fully enforced.

3. Effective policy communication

- ° This element is to ensure that all persons understand and support the program and its implementation. This takes the form, in part, of classroom training, briefings, training programs, video tapes, posters, brochures, company newsletters, etc.

4. Behavioral observation training for supervisors

- ° The implementation of this element is necessary to enable supervisors to detect changes in employee behavior and to initiate appropriate corrective action.

5. Policy implementation training for supervisors

- ° It is necessary to train supervisors as to what procedures should be applied if an employee appears unfit for duty or appears to have drugs in his possession.

6. Union briefing

- ° It is important to establish a spirit of cooperation and enlist the interest and support of the union leadership in preventing and detecting use of illegal drugs, where there are unions.

7. Contractor notification

- ° This element is designed to ensure that contractors abide by the rules and policies issued by the licensee.

8. Law enforcement liaison

- ° This element ensures that proper notification and coordination is conducted with local law enforcement authorities.

9. Chemical testing of body fluids

- ° This element provides an objective means of identifying persons who use drugs and may take the form of pre-employment screening, testing for cause, or random or periodic testing.

10. Employee assistance programs

- ° Such a program would help investigate a broad spectrum of problems that include

drug abuse. Its purpose is to achieve early intervention and encourage both self-referral and referral and support by family and friends.

All key program elements of the EEI policy guide are included in the Applicants' program (Bush at 6-9). The Applicants' program exceeds the EEI Guide in that it includes the following specific practices which are not encompassed within the purview of the EEI Guide:

- (1) Management goes further than just providing guidance and being involved. CP&L has fully documented the delineated management responsibilities in documents such as its "Company Drug and Alcohol Statement of Practice and Drug and Alcohol Interdepartmental Procedure." (Applicants' Exhibit 30)
- (2) Employment screening practices include the following. Applicants for employment are informed of company drug abuse policies. Background investigations are conducted to identify past actions that would be predictive of future reliability and trustworthiness. Professional evaluations including the "Minnesota Multiphasic Personality Inventory" psychological test may be required to evaluate objectively some of the major personality

traits which influence individual and interpersonal behavior. Unfavorable information will (or may) preclude employment.

- (3) Announced or unannounced inspections, investigations, and searches are conducted by CP&L to respond to alleged or suspected drug abuse and to determine if problems do exist.
- (4) Undercover investigations and drug detector dogs are used to respond to alleged or suspected drug abuse and to determine if problems do exist.
- (5) Employee-signed records of policy awareness are maintained to establish a record of awareness to support disciplinary action if and when needed.
- (6) The principal contractor (Daniel International Corporation) established its own program and placed emphasis on quality assurance staff in order to implement CP&L's policies and procedures.
- (7) Recognition of the role that various security measures have in identifying and discouraging drug abuse by site employees provides a

deterrent. Security measures include cooperation with law enforcement investigations, undercover investigations, patrols and other activities, observation and searches, and searches by narcotic detection dogs.

- (8) Laboratory urinalysis is described in greater detail in the drug classes described and qualitative analysis is conducted first, and when positive, it is followed by quantitative analysis.
- (9) Procedures are established to permit confidential and anonymous reporting of known or suspected drug activity. Procedures are also established to provide feedback to person making report. (The Quality Check program. Tr. 2700-2713; Program Testimony at 15; Tr. 8326; 8386-8394; 8905, and 8839). These provide means of obtaining confidential intelligence information.
- (10) Interviews of each employee who leaves employment at the site, and interviews of randomly selected employees provides means of obtaining intelligence information.

(11) Establishment of central point of contact who is coordinator for all information concerning drug activities makes more effective and coordinated planning in determining and taking appropriate actions, including those which may be necessary with respect to the employee's previous work.

(12) Use of expertise of numerous entities, including consultants enables CP&L to utilize the knowledge and experience of others to assure program is viable. (Bush at 9-13).

34) Based upon his professional experience, Mr. Bush for the NRC Staff concludes that the Applicants' drug detection and prevention programs at the Harris site, including those of Daniel Construction Company, are adequate and effective (Bush at 14). Mr. Bensinger concludes that the Applicants' programs are effective. (Program Testimony at 22).

35) Based upon the evidence in the record, as summarized above, the Licensing Board finds that the various drug programs in place at the Shearon Harris site are comprehensive and adequate and that they exceed the standards recommended to the industry by the Edison Electric Institute.

2) Whether Illegal Drug Activity Is Widespread At The Harris Site

36) The Contention, as admitted by the Licensing Board, is framed in terms that drug use at the site is widespread. As this proceeding

developed, the contention was addressed, sub silentio, by the parties as through it read "drug involvement among site workers was widespread," even through the contention was not formally amended. This is a much broader contention than was admitted. It involves buying, selling and dealing at the site and off site. As do courts, the Board considers the pleadings to be amended to conform to the evidence.

A) Applicants

37) The Applicants put on a panel of three of their employees, Messrs. Hindman, King and Joiner and a consultant, Mr. Peter B. Bensinger. Statement of professional qualifications for Messrs. Hindman, King and Joiner follow transcript page 8471. Mr. Hindman is employed as Manager, Harris Project Administration. Mr. King is the supervisor of CP&L's Construction Security Unit. Mr. Joiner is the Commissioned Construction Security Agent at the Harris site. Mr. King is a former officer of the Raleigh Police Department with undercover and drug experience. Mr. Joiner has a degree in police science and was an investigator with the Raleigh Police Department. (Undercover Testimony at 2-6). The Board finds that they are well qualified experts in their disciplines.

38) The four Applicant witnesses who address widespread use testified that the illegal drug activity at the site was not widespread (Undercover Testimony at 21; and Tr. 8802-8803).

39) Messrs. Hindman's, King's and Joiner's conclusion is based upon their being on site, their personal observations, the number of persons suspected of illegal drug activity, random searches, the drug dog

searches, the observations of employees of others, i.e., the contract security personnel at entrances and throughout the facility, supervisor's observations, and on-site control of personnel movement (supervisors are given training in recognition of drug use syndromes, the Quality Check program which provides for anonymous tips, the amount of drugs seized (a small quantity), the results of the Wake County Sheriff's office undercover operation, and, of course, confidence in their Company's total drug program. (Undercover Testimony at 14-23, 29, 32, 36-37, 40-41).

40) Mr. Bensinger's conclusion is based upon his professional judgment of CP&L's drug programs, the reasons advanced by Messrs. Hindman, King and Joiner and a number of other objective indicia: 201 total suspects out of a total site employment of 26,000 since February 1978; only 13 employees having been identified using illegal drugs on site; the smallness of quantity of drugs found (Tr. 8804); the low accident rate at Harris which is lower than North Carolina or national rates, i.e., widespread drug use would raise the accident rate (Program Testimony at 10-21, Tr. 8893). Other indicia of non-widespread activity are the type of drugs purchased (Tr. 8804); the drug dog results (Tr. 8343); the undercover operation which did not go beyond the informant's circle (Tr. 8344 and 8479); the lack of information to indicate that there is anything more than some individual use by site employees (Tr. 8344) i.e., not a part of a large network; absenteeism rates by workers (Tr. 8394); again the smallness of the number of suspects; and co-worker tips (Tr. 8415).

41) Based upon his assessment of these previously identified indicators as they apply to the Harris site, Mr. Bensinger concludes that

they do not indicate widespread drug activity at the Harris site.
(Program Testimony at 45).

B) CCNC

42) As noted in the Introduction and Background CCNC filed an affidavit of Patty Miriello in opposition to the Applicants' motion for summary dismissal of WB-3. The substance of that affidavit with some personal background data added was proffered as CCNC's direct case. Part of the proffered testimony was withdrawn by agreement of the parties. Miss Miriello's testimony as admitted follows transcript page 9084. Miss Miriello was employed at the Harris site from April 1984 through August 1985 (Miriello at 2). Miss Miriello testified that drug use at Harris was widespread (Miriello at 6). The only basis in her written testimony for such a conclusion is that twelve months ago October 1984 she saw seven or eight construction workers smoking marijuana up on the boilers (Miriello at 4) and she could smell marijuana in the parking lot. In response to cross examination by the Attorney General, Miss Miriello amended her direct testimony to state that she was offered cocaine by a site employee twelve months previously (Tr. 9135) and also that there was one other unidentified drug activity at the site (Tr. 9142 and 9144). Miss Miriello's education background, submitted under oath, was not correct (Tr. 9114). On August 12, 1985 she wrote Mr. McDuffie, vice president of Applicants threatening to halt the nuclear project (Tr. 9101). She testified that she did not report the eight marijuana smokers at the boilers, the cocaine offer or the unidentified one other drug activity at the site (Tr. 9105) to CP&L nor were these incidents reported

to NRC (Tr. 8749). When she left CP&L's employment Miss Miriello filled out a quality check form (Applicants' Exhibit 41) where she indicated that she had no concerns or allegations in regard to the design, fabrication or construction at Harris (Tr. 9105). The Licensing Board Chairman requested that Miss Miriello transmit her concerns to the Staff so they could look into them (Tr. 9147). The Staff committed to do so (Tr. 9148). As of the date of the Staff filing its Proposed Findings, Staff Counsel informs the Board that Miss Miriello had not provided the Staff (Atlanta Regional Office) with the names, dates and descriptions of circumstances of those she alleges to know were involved in illegal drug activity at the Harris site. Miss Miriello testified that she knew the identity of the seven or eight persons alleged to be smoking marijuana in October 1984. She testified that she did not report the incident or names to CP&L, to Daniel, or to the Sheriff's office (Tr. 9150). We do not find the written and oral testimony of Patty Miriello to be credible and give it no weight.

C) The Undercover Operation Background

43) In August 1984 Mr. Joiner, CP&L Construction Security, initiated a request to bring police into the facility to investigate drug activity (Tr. 8776); Prevalence Testimony at 16). CP&L management approved and an undercover operation at Harris commenced in November 1984 and was terminated in January 1985 (Tr. 8481 and 9169-71). Kenneth A. Hensley of the Sheriff's office was on site most of the week days for those eight weeks as an undercover agent (Tr. 9169). Donald Williams of the State Bureau of Investigations was on site on some 10 to 15 times during the eight

week period, frequently for only 3 to 5 hours at times and made one drug purchase (Undercover Testimony at 27, Tr. 8471). The Applicants provided the police with cover, with an informant, and with the names of 61 suspects, Tr. 8486, 8586, 8668). Mr. Hensley saw 40 more suspects he could not identify (Tr. 9241) and suspected the existence of another 100 about whom he knew nothing (Tr. 9241), making a total of 200 suspects resulting from the undercover operation out of a present site work force of 6000 persons (Tr. 8346, 9263). Mr. Hensley testified that there may be more (Tr. 9242, 9256).

44) Some discrepancies exist among the testimony of Applicants witnesses, the SBI witnesses and the Sheriff's Department witnesses. Those disagreements do not concern our consideration of Contention WB-3. The Board recognizes that CP&L in relation to its licensing under the Atomic Energy Act is concerned with construction that provides reasonable assurance of public health and safety and that the police are concerned with apprehending violators of the law (8586-8596). Some misunderstanding may have arisen due to differences in objectives.

D) CCNC

45) CCNC called as its witnesses T.W. Lanier, R.J. Self and K. A. Hensley of the Sheriff's Department (Tr. 9164).

46) In their direct testimony (Tr. 9164-9197) Messrs. Lanier, Self and Hensley did not testify about the Applicants' drug prevention programs, whether drug activities were widespread or whether Applicants re-inspected work was performed by persons suspected of drug activity. In response to cross-examination by counsel for the Attorney General,

Mr. Hensley stated that drug activity at the Harris site was widespread (Tr. 9248).

47) The Board followed up this statement of Mr. Hensley (Tr. 9245-9247). Mr. Hensley then informed the Board that he was no expert and only had a feeling (Tr. 9247). His testimony was so lacking in basis as to make his conclusion of "widespread" of no reliable, probative value. In further response to the Board, Mr. Hensley testified that he had no estimate of what per centage of the Harris work force was engaged in illegal drug activity (Tr. 9256).

E) The Attorney General of North Carolina

48) The Attorney General of North Carolina presented Mr. Donald Williams, the SBI's undercover agent at the site, Ms. Shirley Burch, his then SBI supervisor, and Mr. Charles Overton, Ms. Burch's supervisor (Tr. 9267).

49) In his prefiled written testimony Mr. Williams did not address the Applicants' drug program (except to note that they employed a drug dog), the issue of widespread or the Applicants' reinspection of work

performed by persons suspected of drug activity. In response to cross examination by the Applicants Mr. Williams testified that drug activity was not widespread but was a problem (Tr. 9302). This adds little to resolution of the issues raised by the contention.

50) Mr. Overton's direct written testimony, and cross examination of him Tr. 9302-9308, 9318-19 did not address any of the three issues raised by CCNC's WB-3, except to note that the Applicants' intent to bring drug dogs on to the site in the future was the reason that he and Sheriff Baker terminated the undercover operation. (Overton at 5, 9274).

51) Ms. Shirley Burch's direct written testimony addressed the Applicants' drug control program only to the extent that she noted that drug dogs were involved (Burch at 6 and 8). Ms. Burch did not address the Applicants re-inspection program of persons suspected of being involved in drug activities. Ms. Burch alleged widespread drug activity at the Harris site (Burch at 8, Tr. 9274). The Chairman questioned Ms. Burch regarding her use of the word widespread (Tr. 931). Ms. Burch replied that "widespread" was "not exclusive to [geographic location] but inclusive to the potentiality of people in that area that would also be exposed to that individual" Tr. 9311. She further testified in response to Board questions that she obtained her information Mr. Williams and Mr. Hensley (Tr. 9312, 9313) whose testimony the Board has already considered.

F) The NRC Staff

52) The Board was informed on September 13, 1985 that the Staff had little to offer on whether drug activity at the Harris site was widespread (Mr. Treby, Tr. 8233 and Mr. Long, Tr. 8766). However, there

were Staff witnesses appearing at various times during the hearing and the Board did not entirely let them avoid this issue.

53) Mr. Francis J. Long, Technical Assistant to the NRC Regional Administrator, Atlanta Region, testified regarding a summary of drug programs made in 1982. The Board asked Mr. Long as to his understanding of widespread. Mr. Long stated that two hundred out of the thousands of total site employees would not be widespread (Tr. 8719-20). The Chairman probed further and asked Mr. Long if 200 out of the present site work force of 6000 would be widespread and Mr. Long replied no (Tr. 8722).

G) The Licensing Board's Analysis of the Issue, the Evidence, and Conclusion

54) During the hearings the words "widespread" and "several hundred" became important. Widespread was important because it is an allegation of the Contention WB-3. Several was important because "several hundred people" were alleged to be engaged in drug activity at the site by Ms. Burch of the SBI on page 5 of her affidavit, cited supra. The largest number of suspects came from Mr. Hensley, the onsite undercover agent. His figures, cited supra, add up to approximately two hundred persons out of a site employment force of 6,000. The dictionary defines several as "being more than two or three, but not many" ^{13/} For purposes of resolving Contention WB-3 we accept that there may be a total of two to

^{13/} The American College Dictionary, Random House, N.J., 1970.

three hundred out of the 6,000 site employee who are engaged in illegal drug activity.

55) Widespread drug activity had varying treatment. Contention WB-3 alleges widespread and is premised solely on a newspaper article which alleged widespread drug use, estimating 100 plant workers were involved. ^{14/} Mrs. Burch used the term widespread, based upon the undercover agents' reports (Burch at 8). Undercover Agent Williams testified that use was not widespread. Undercover Agent Hensley was inconclusive as to widespread drug activity.

56) Peter Bensinger, the Applicants' witness and former head of the United States Drug Enforcement Agency testified that

"In the work place in America today, anywhere from five to twelve percent of the working population may be using illegal drugs, on and off the job (Tr. 8338). . . . A finding of approximately the same percentage or higher at a work location than that which is available in the United States itself would represent widespread use. What I am saying then is that a figure in the upper limits of ten percent of all employees at a job site would represent, to me, widespread use" (Tr. 8339).

The Licensing Board adopts Mr. Bensinger's statement as correct. The evidence adduced in this proceeding discloses a maximum figure of 200 site employees being involved with illegal drug activity. ^{15/} This is approximately 3% of the on-site work force. The Board finds that illegal drug activity at the Shearon Harris site is not widespread. The basis of

^{14/} "Request for Admission of New Contention WB-3 (Drug Abuse During Construction" (January 18, 1985).

^{15/} Hensley (Tr. 9241) "plus some more".

this finding is in the evidence detailed above. 201 suspected of drug activities out a work force population of 26,000; 100 identified as participating in drug activity by CP&L and Deputy Sheriff Hensley; 100 more suspected by Deputy Sheriff Hensley; little quantities of drugs found by the drug detection dogs; small absenteeism and accident rates at the site; the smallness of the quantity of drugs involved; the smallness of the monetary value of the drugs involved; the professional opinion of Messers King, Joiner, Plueddeman and Prevatte who are on-site and look for drug activity; and the professional opinion of Mr. Bensinger, an expert in drug use. Adding up all of the foregoing clearly does not lead one to the conclusion that illegal drug activity at the Harris site approaches or exceeds the upper limit (10-12%) of drug activity in the American work place today.

IV. Reinspection of work performed by Persons Suspected of Being
Involved In Illegal Drug Activity

57) An evidentiary hearing was held on November 12, 1984 to address that part of Contention WR-3 which alleges that the Applicants have failed to reinspect all safety related work done by known drug abusers. CCNC offered no direct affirmative evidence to support its allegations but did cross examine Applicants' and Staffs' witnesses. In order to prepare to address this issue the NRC Staff requested that Applicants prepare and submit in a MATRIX form a listing of all persons suspected of drug activity, a description of the work they performed including the safeguards, inspections and checks that appertain to such work and

information describing Applicants' actions in regard to those persons it suspected of being involved in illegal drug activity. That report was filed on September 19, 1985 and served on the Board and all parties. That report was updated to October 15, 1985 and accepted into evidence as Applicants' Exhibit 51. It identified some 218 persons suspected of drug related activity.

A) Errors Made By Drug Users

58) The Applicants first witness was Dr. Robert L. DuPont, Jr. Dr. DuPont is a medical doctor, Board certified psychiatrist, former Director of the National Institute of Drug Abuse and Chief White House advisor on drug abuse from 1973-1975 (DuPont Attachment 1). Dr. DuPont is a recognized international authority on drug effects and the Board so recognizes him.

59) Dr. DuPont testified that drug users do not have work related problems which are different from those occasioned by the general population (DuPont at 12-13). Drug use would not result in errors that are qualitatively different from errors caused by other impairments (DuPont at 12-13; Tr. 10,011-13). Drug users are not more likely to be involved with sabotage or deliberate concealment of errors (Tr. 10,013-15). Mr. Joiner who works with Harris security and has been in the facility for some time testified that he has dealt with the majority of these accused of drug activity on the site and the none had mental or physical faculties impaired. (Tr. 8841). Mr. Prevatt, the NRC senior resident inspector for construction who is on site almost daily has not seen a worker under the influence of drugs

(Tr. 8762). One direct conclusion that this Board makes from the above is that errors committed by persons engaged in drug activity at the Harris site are not likely to be different in kind from other errors which are routinely identified through the Applicants QA/QC and inspection programs. ^{16/}

B) Reinspection

60) To address what actions the Applicants have taken in regard to work performed by a person suspected of drug activity the Applicants called as witnesses Harold R. Banks, Manager Corporate Quality Assurance Department, Roland M. Parsons, Project General Manager, Harris Nuclear Project Department, George L. Forchand, Director of Quality Assurance/Quality Control-Harris Plant, Thomas W. Brombach, Project Specialist/Insurance Inspection-Harris Plant and Eugene F. Trainer, Senior Vice President of Lygna Energy Services, Inc., a consultant specializing in quality assurance and quality engineering (Tr. 10,077). The NRC Staff called as its witnesses Richard Prevatte the NRC senior resident

^{16/} Applicants' QA program for the construction of the Harris Plant was approved by the NRC prior to its implementation. That approval included a finding that the program complies with 10 C.F.R. Part 50, Appendix B, Criterion XVI of which requires that "[m]easures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and non-conformances are promptly identified and corrected." Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-78-4, 7 NRC 92, 107-109 (1978). In addition, the NRC Staff constantly reviews the Applicants' QA programs and have found them acceptable. See, SALP for Feb. 1, 1983, through Apr. 30, 1984, pages 4, 6, and 8 which rate the QA programs at Brunswick, Robinson and Harris as 2s. That SALP follows Tr. 3360.

inspector for construction at the Harris site and Paul Frederickson the section chief in the Atlanta Regional Office to whom the Applicants' nuclear facilities are assigned (Tr. 10,163). The Applicants' and Staffs' witnesses are well qualified experts in their respective disciplines.

C) Craft Workers

61) Exhibit 51 identifies 218 Harris site employees implicated in some way in possible drug activity. The majority (146) of these persons were craft workers. ^{17/} Applicants did not reinspect safety-related work performed by craft workers known to have used or who were suspected of being implicated in drug activity. As a practical matter it was not always possible for Applicants to determine with certainty all work or even all systems or components on which work was performed by an individual craft worker. (QA Testimony at 5-6). The Applicants made an evaluation of the work of all craft personnel implicated in possible drug activity. This evaluation was performed by four key Harris site individuals: the Manager QA/QC - Harris Plant, the Manager - Harris Project Administration; the Project General Manager; and a representative of the contractor (for non-CP&L employees). (QA Testimony at 7; Tr. 10,096-99, and 10,105-08). During these evaluations, the individual's job description and a supervisor's description of the employee's work

^{17/} Not all of the 218 identified employees nor all of the 146 craft workers performed safety-related work at the Harris Plant. See Applicants' Ex. 51 at Chart II-1 and II-2.

assignments were reviewed. The employee's work was evaluated to verify whether the work was subjected to one or more quality inspections and whether the employee's performance alone was not relied on for assuring the quality of the work. It was determined that all safety-related craft work performed by employees implicated in drug activity was subject to independent inspections ^{18/} and, therefore, that reinspection -- even if feasible -- was not necessary. (QA Testimony at 7).

62) Mr. Prevatt discussed with the Applicants their treatment of craft work performed by persons suspected of drug activity. In addition, he reviewed the information and work history data compiled by the Applicants on the 8 workers arrested as a result of the undercover operation. Mr. Prevatt additionally selected 10 individuals from the September 19, 1985 MATRIX, which is Exhibit 51, and obtained the details of the Applicants' review of their work. These 10 individuals consisted of the following: a painter; iron worker; pipefitter; field engineer; carpenter; electrician; utility worker; instrument fitter; rebar iron worker; sheetmetal worker; and truck driver. Mr. Prevatt reviewed the information provided by the Applicants which included a listing of each individual's work locations, the types of work done during their employment period, and in some cases the specific components or items worked on. This information also contained the employment history and evaluations still available onsite for the selected individuals. Based

^{18/} The inspection activities for craft work are summarized in Section III of Applicants' Exhibit 51. Applicants' bases for determining that employees' work was subjected to inspections is summarized in Chart II-1 of Applicants' Exhibit 51.

upon his review of this information and his personal knowledge of the applicable work procedures, the type of work performed by these individuals, and the inspection requirements for these types of work, Mr. Prevatt concurred with Applicants' decision that reinspection is not required for the work performed by these 18 individuals. Mr. Prevatt considered this across-the-board sample and his knowledge of the work and applicable inspection requirements for the other effected workers to be adequate to establish that reinspection is not required for the other craft personnel cited in the September 19, 1985 MATRIX which is Applicants' Exhibit 51 (Frederickson-Prevatte at 7). CCNC cross-examined the Staff panel of Mr. Prevatt and Mr. Frederickson for 13 pages of transcript and Mr. Eddleman cross-examined them for 3 pages of transcripts. The cross-examination only added strength to the Staff testimony (see, for example 10,182-83). The Board concludes that the Applicants' decision not to inspect work performed by the 146 craft workers identified in Exhibit 51 was proper.

D) Inspection Personnel

63) Section VI of Applicants' Exhibit 51 describes the results of evaluations and reinspections for the 27 quality inspection personnel -- NDE inspectors and QA/QC/CI inspectors -- implicated in possible drug activity. These results are summarized here as the basis for confirming that the quality of the work performed by these inspection personnel poses no safety threat to the Harris facility.

64) Within the Applicants QC organization, three NDE (non-destructive examination) inspectors have been terminated because of positive drug

screen test results, and two have been terminated for refusing to take the test. Reinspection of the Liquid Penetrant and Magnetic Particle examinations performed by these NDE inspectors has been completed in accordance with Harris Plant Procedure CQA-7. "Evaluation of Program Effectiveness" (Applicants' Ex. 50), which provides sampling method to assess empirically the overall adequacy and effectiveness of an inspection program. The sample size for each category of components is based on Military Standard 105-D, Table I General Inspection Level II, page 9, and is based on the total population of the components in question. ^{19/} Quality attributes are reinspected for each component. See Applicants' Ex. 51 at Section III for a description of quality attributes for each component of the work re-inspected. (Reinspection Testimony at 9).

65) Inspection effectiveness or proficiency is calculated by comparing the number of acceptable attributes with the total number of attributes reinspected, and is expressed as a percent. The minimum acceptable inspection effectiveness levels of 95 percent for objective inspection attributes and 90 percent for subjective inspection attributes were established in Harris Plant Procedure CAQ-7 based on the Byron reinspection plan. ^{20/} The 95 percent/90 percent acceptance criteria do not

^{19/} Military Standard 105-D is a sampling system that has acceptability and widespread usage in both the defense and nuclear industries. (Trainer at 15 and 22; Tr. 10,077)

^{20/} Objective inspection attributes are measurable and are not greatly affected by human factors (e.g. physical dimensions); conversely subjective inspection attributes are subject to interpretation and result in the recording of qualitative data (e.g. weld overlap and

include defects which have nuclear safety significance. ^{21/} (Trainor at 16; QA Testimony at 23-24).

66) Of the 284 items reinspected which were originally inspected by the three NDE inspectors, who were terminated because of positive drug screen test results, only four minor deficiencies -- all corrected by minor buffing -- were found. The results of these reinspections confirm the proficiency and reliability of the NDE inspectors' work. The Radiographic Examination (RT) work done by four of these inspectors has not been reinspected, for the following reasons. Certified as Level II-Limited (Shooter Only) in RT, these four inspectors participated as members of a two-man team in making radiographic set-ups and film exposures, but not in performing interpretations of RT film for final acceptance or rejection of the items radiographed. RT film is subject to two independent reviews/interpretations by other Level II personnel qualified for film interpretation. (Reinspection Testimony at 9).

67) Seven CI inspectors -- six certified in cable pulls and/or cable terminations, and one CI inspector certified in drilled-in expansion anchors -- have been terminated and/or removed from the job for positive drug screen test results (two), refusal to take the test (four)

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

surface profile). Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-41, 20 NRC 1203, 1220-33, aff'd, ALAB-793, 20 NRC 1591, 1598-99, 1607 (1984); Banks/Parsons at 23.

^{21/} The definition of a deficiency with nuclear safety significance is found at 10 C.F.R. § 50.55(e): "a deficiency found in design and construction, which, were it to have remained uncorrected, could have affected adversely the safety of operations of the nuclear plant at any time throughout the expected lifetime of the plant."

and suspected drug activity based on information from a reliable source (one). A sample of the work of these inspectors has been reinspected pursuant to CQA-7, and the results -- an overall acceptance rate for the seven inspectors of 99.3% -- were acceptable under the procedure.

Fourteen QC inspectors and the one inspector-in-training have been terminated because of a positive drug screen test or refusal to take the drug screen test. Since the inspector-in-training was never certified, no reinspection was required. The work of eight of these QC inspectors was reinspected pursuant to Harris Plant Procedure CQA-7. The reinspections confirm the inspectors' proficiency and reliability, in that the overall acceptance rate was 99.7%. (Reinspection Testimony at 10).

68) Of the remaining six QC inspectors, one field-tested concrete and performed sieve analysis, grout testing and cadweld inspections; this inspector was terminated for positive drug screen test results. There are no safety concerns with the employee's assignments in field testing concrete, grout testing or sieve analysis, since final acceptance of concrete and grout is based on meeting the required design strength as determined by later testing. A statistical sample of the cadwelds in concrete reinforcing steel bars subjected to cadweld inspections are cut out and subjected to tensile testing. The high success rate of rebar and cadweld splices subjected to tensile tests (only 8 out of 2,764 splices tested failed to meet minimum tensile requirements) and the large margin by which those test results exceed design requirements independently confirm the quality of cadweld splicing and cadweld inspections. Consequently, no reinspection has been performed for this inspector. (Reinspection Testimony at 10 and 11).

69) Another QC employee was a field concrete tester who also performed rebar and cadweld tensile testing, sieve analysis and grout testing; this inspector was removed from the job for suspected drug use based on information provided by a reliable source. There are no safety concerns with this employee's work in concrete and grout testing or sieve analysis. While this employee actually performed tensile testing, the results of this employee's tests are consistent with the results of tensile tests performed by others, as determined by a comparison of a statistical distribution of this test data with that of the remaining inspectors. Because of the uniformly high success rates of such tests performed by all such testers and in light of the satisfactory 30 supervisory audits of this inspector's work, the Applicants concluded that there was no reasons to doubt the validity of this inspector's test results. (Reinspection Testimony at 11).

70) Since the sending of the MATRIX to NRC on September 19, 1985 and the updating of October 15, 1985, three additional inspection personnel have been identified as being suspected of involvement with illegal drug activity. Evaluation of their work was still in progress as of the date of the hearing. (Reinspection Testimony at 12).

71) The final quality inspector was assigned to perform final system walkdowns with representatives from the system turnover group, construction engineering, and start-up personnel. This assignment did not require the individual to review documentation or inspect systems to determine quality or acceptability. In addition, the inspector was not solely responsible for any aspect of his assignment, and the turnover documentation packages were reviewed by a supervisor. For these

reasons, no reinspection or reverification of this inspector's work was required. The details of the reinspection are set forth in Exhibit 51.

72) The Applicants concluded and the Board concurs that the reinspection data do not show a lower rate of acceptance of work inspected by inspectors implicated in possible drug activity than the overall acceptance rate of inspected safety-related construction work. This is not surprising since there has been no confirmed incident of a significant quality deficiency attributable to craft personnel, quality inspectors, NDE personnel or engineering support personnel identified or suspected of drug involvement. (Reinspection Testimony at 13).

73) Mr. Frederickson and Mr. Prevatt have reviewed the Applicants' work (Exhibit 51) in relation to inspection personnel suspected of being involved with illegal drugs and find that the work performed by those inspectors was acceptable (Frederickson-Prevatte Testimony at 4 and 5).

74) As a matter completely separate and apart from WB-3, CCNC, this proceeding, and suspected drug involved inspectors, and in order to determine the effectiveness of its own construction QA program, in June 1984, CP&L began implementation of a QA Attribute Surveillance Program -- a sample reinspection program of safety-related work at the Harris Plant. The methodology of the QA Attribute Surveillance Program is based on the precedent established by the reinspection plan approved in Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-41, 20 NRC 1203, 1220-33, affirmed, ALAB-793, 20 NRC 1591, 1598-99, 1607 (1984). (Banks/Parsons at 21; Tr. 10,077) Attribute surveillances are performed in accordance with Harris Plant Procedure CQA-7, "Evaluation of Program Effectiveness" (Applicants'

Ex. 50), and provide a statistical sampling method to assess empirically the overall adequacy and effectiveness of the inspection program for nuclear safety-related work. CP&L is in the process of conducting a physical reinspection of a sample of all safety-related components in the Harris Plant that can be reinspected. (QA Testimony at Attachment 3). The statistical sample size for each category of components is based on Military Standard 105-D, Table I General Inspection Level II page 7 and is based on the total population of the components in question at the Harris Plant. Quality attributes are reinspected for each component; any deficiencies are reported as nonconformances for engineering evaluation and disposition. (QA Testimony at 21 and 22).

75) Inspection effectiveness or proficiency is calculated by comparing the number of acceptable attributes with the total number of attributes reinspected, and is expressed as a percent. The minimum acceptable inspection effectiveness levels of 95 percent for objective inspection attributes and 90 percent for subjective inspection attributes were established in Harris Plant Procedure CQA-7 based on the Byron reinspection plan. The 95 percent/90 percent acceptance criteria do not include defects which have nuclear safety significance. (QA Testimony at 23-24).

76) In the one and one-half year period that the QA attribute surveillance program has been in effect, 3,183 components, out of a total selected sample of 4,269 components, have been reinspected as of October 1, 1985. The components reinspected thus far encompass 54,560 attributes, of which only 269 were found to be deficient. This establishes that the Harris Plant quality inspection program is 99.5 percent

effective overall, with the lowest individual component (structural steel installation inspection) at 95.3 percent. (Banks/Parsons Testimony at 24 and Attachment 3; Tr. 10,077) No deficiency with safety significance has been identified. (Id. at 24).

77) Mr. Eugene F. Trainor made a statical analysis of the results of Applicants' QA Attribute Surveillance Program. He plotted the inspection proficiency per surveillance activity and determined the mean inspection proficiency to be 99.5 percent. He observed that the mean exceeds the specified proficiency for objective attributes of 95.0 percent by 4.5 percent. He also observed that in all cases individual inspection proficiency per surveillance activity exceeds the specified proficiency for objective attributes from 0.3 percent to 5 percent. (Trainor at 16).

78) The results of his analysis are statistically significant based on an analysis of variance (ANOVA) that determined the variation of the mean surveillance activity proficiency (99.5 percent) about the specified proficiency (95 percent). This technique uses a ratio of the variation of the mean and the variation of the experimental error (F-ratio) to test for statistical significance. The results of the test show that there is at least 99 percent confidence that there is statistical significance. Furthermore, based on the average sample size of surveillance activity attributes, the technique will detect a change in proficiency as small as 1.0 percent. (Trainor at 17).

79) Based on the sample size and the reinspection results, it can be concluded with 99 percent confidence that the inspection proficiency of inspectors at the Harris Plant is greater than 95 percent. Mr. Trainor

concluded with 99 percent confidence that the range of inspector proficiency will lie between 99.9 percent and 97.7 percent. This would appear to be consistent with other industry reinspection programs, as for example the reinspections at Commonwealth Edison Company's Bryon Plant which showed a range of 96.3 percent to 99.6 percent for inspector proficiency based on the results of "objective" inspection. (Trainor at 18).

80) Mr. Trainor then analyzed the results of the reinspection of work by inspectors suspected of illegal drug activity. He concluded that the reinspection program utilized by CP&L at the Harris Plant to reinspect suspected work is an acceptable method for determining the performance of inspectors. Here Mr. Trainor was reviewing the performance of a group of inspectors identified in Applicants' Exhibit 51 alleged to be implicated in possible drug activity. A method that is totally satisfactory (reinspection of nuclear safety-related components the QA attribute surveillance program) must be satisfactory for the performance review of a segment of that population (the drug suspected inspectors) given that one is comparing the performance of the segment to the total population to determine variances in performance. In this particular instance, there appears to be no appreciable variance between the performance of the total population, all inspectors, the population segment, drug suspected inspectors and the apparent industry norm.

81) It can be concluded with 99 percent confidence that the inspector proficiency of the alleged drug users will be greater than 95 percent and that it will lie in a performance range of 99.9 percent to 96.1 percent. (Trainor at 19).

82) Mr. Trainor's review of the results of the QA attribute surveillance data and the reinspection data of those inspectors who might be implicated in drug activity indicate that there is no apparent difference in performance. This being the case, it can be predicted with 99 percent confidence that inspector performance for objective inspection will be greater than 95 percent and will lie within a performance range between 99.9 percent and 96.1 percent. (Trainor at 19).

83) Thus Mr. Trainor concluded that there are no apparent differences between the performance of the total inspector population and that of the alleged drug users. Furthermore, if one accepts the hypothesis that widespread drug usage will cause a significant reduction in inspector performances, then there must be an indication of significant performance reduction to conclude that there was widespread drug use among inspection personnel. This hypothesis is not substantiated by the reinspection data which indicates that inspector performance is well above the accepted standard of 95 percent proficiency level. (Trainor at 18-21).

84) In non-technical layman terms, the inspection work performed by the inspectors identified in Applicants Exhibit 51, MATRIX, is as proficient as inspection work performed by inspectors who are not involved in illegal drug activity. In addition, the inspection proficiency level is so high that it follows that the inspectors work performance was not impaired.

85) The testimony of the Applicants' witnesses, Mr. Prevatt, Mr. Frederickson and Mr. Trainor is competent, reliable, substantial and probative. Cross-examination only added strength to that evidence. We adopt it as being true and correct.

E. Conclusion

86) Applicants have evaluated all identified Harris site employees implicated in possible drug activity for the potential impacts of drug use on the quality of construction at the Harris Plant. See Applicants' Exhibit 51 at Chart II-1. Applicants and Staff have determined that safety-related craft work is subject to sufficient quality inspections to assure that the work was adequately performed. Reinspection of all work performed by craft workers implicated in possible drug activity was neither practical nor necessary. The types of errors likely to be made by a craft worker under the influence of drugs are qualitatively no different than errors made by workers for a variety of other reasons. QA inspection personnel implicated in possible drug activity were evaluated and, where appropriate, their work was reinspected pursuant to Harris Plant Procedure CQA-7. Reinspection pursuant to that procedure is appropriate and provides reasonable assurance that the original inspection work was adequate. The results of all such reinspections -- establishing a 99.6 percent proficiency for inspectors so implicated -- and the continuing audits, surveillances and third-party reviews of construction work, even after inspection, provide reasonable assurance that the performance of quality inspectors has not been degraded by drug use. Applicants and Staff have demonstrated that possible drug use by Harris site employees have not affected the quality of construction at the Harris Plant.

V. CONCLUSION OF FACT

87) This Board finds, supported by a preponderance of the evidence that (1) the Applicants drug prevention and detection programs at the Harris Site, including those of its contractors are adequate; (2) illegal drug use at the Harris Site is not widespread and that there is no evidence that drug activity among these employed at the Harris Site begins to approach or exceed the upper limits of what may be expected today to occur in the American work place, i.e., 5 to 12% of the employees being engaged in some sort of illegal drug activity either, on or off the site; and (3) the Applicants' programs to address work performed by persons suspected of being involved in illegal drug activity is adequate to provide reasonable assurance that construction is not degraded.

VI. CONCLUSION OF LAW

This is a contested proceeding on an application for an operating license for a utilization facility. In issuing this fourth partial initial decision, the Board has now made findings of fact and conclusions of law on all safety matters put into controversy by the parties to the proceeding, except for the emergency preparedness contentions which remain pending before the Board. The Board has not determined that a serious safety, environmental, or common defense and security matter exists. See 10 C.F.R. §2.760a. Other findings required to be made prior to the issuance of an operating license, except for the remaining matters in controversy, are to be made by the Director of Nuclear Reactor Regulation. See Id. and 10 C.F.R. §50.57.

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.

As reflected in the foregoing opinion on CCNC Contention WB-3 and in the other partial initial decisions on safety matters issued by this Board, the Board has resolved contested safety matters in favor of the Staff and the Applicants and against the Intervenors. The Board concludes, as to the contested safety matters addressed herein, there is reasonable assurance that, if an operating license is subsequently granted for the Harris facility, the activities authorized thereby can be conducted without endangering the health or safety of the public and that such activities will be conducted in compliance with applicable NRC regulations.

VII. ORDER

WHEREFORE, THE BOARD ORDERS, in accordance with 10 C.F.R. §§2.760(a) and 2.762, that this Partial Initial Decision shall constitute the final action of the Commission thirty (30) days after the date of its issuance, unless an appeal is taken in accordance with section 2.762 or the Commission directs that the record be certified to

it for final decision. Any Notice of Appeal from the decision must be filed within ten (10) days after service of the decision. A brief in support of the appeal must be filed within thirty (30) days (forty (40) days in the case of the NRC Staff) after filing the Notice of Appeal. Any party which is not an appellant may file a brief in support of or in opposition to the appeal within thirty (30) days (forty (40) days in the case of the NRC Staff) after the period has expired for the filing and service of the briefs of all appellants.

Respectfully submitted,

Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 19th day of December, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 DEC 24 A11:04

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that copies of "NRC STAFF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CONSERVATION COUNCIL OF NORTH CAROLINA'S CONTENTION WB-3 (DRUG ABUSE DURING CONSTRUCTION)" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (*), this 20th day of December, 1985:

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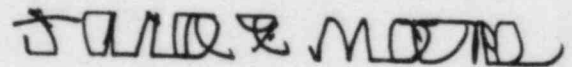
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