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October 4, 1982

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Secretary of the Commission  
Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKET NUMBER  
PROPOSED RULE PR-50  
(47 FR 33980)

Attention: Docketing and Service Branch

Gentlemen:

We have reviewed the proposed rule 10 CFR 50.54 (X) (1), Fitness for Duty Rule, published in the August 5, 1982, Federal Register and offer the following in response to the requested comments:

1. The proposed rule is not definitive and enforcement would be quite difficult. As noted by the Task Force (NUREG 0903) this is a performance oriented rule which does not specify the controls that must be established, only the goal. Its implementation would subject individuals to subjective judgment and/or various interpretations. Of significance is that the rule itself does not define fitness per se. Whatever the definition of "fitness for duty" the requirement is unreasonable and borders on violation of an individual's rights.

Even to approach assurance, as envisaged by this rule would require (1) an extensive knowledge (record) of each employee's past behavioral patterns, and (2) a thorough physical (and mental) examination prior to access to secure areas to verify that accepted patterns had not changed. The Utilities have already established a powerful case against physical tests such as breath, blood, or urine (Page II-2 of NUREG 0903).

2. Implementation of the rule could result in large expenses, especially to independent contractors whose services are utilized in nuclear power plants.
3. The rule will serve as another hardship in the construction of nuclear power plants. It will discourage good people from working in nuclear power plants.

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add: E. Merschoff  
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Acknowledged by card 10/21/82 [signature]

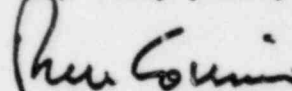
Secretary of the Commission  
Nuclear Regulatory Commission  
October 4, 1982  
Page Two

We believe that the full exercise of the Utilities' existing anti-drug and anti-alcohol policies, including termination for their violation, should be accepted as sufficient deterrent. We also believe that if such policies are promulgated as a rule, their implementation should be limited to the confines of TYPE I VITAL AREA instead of the "PROTECTED AREA" as noted in the proposed rule. This is consistent with physical protection requirements.

For these reasons we recommend that the proposed rule, as written, should not be adopted.

We appreciate the opportunity to comment on this matter, and are willing to discuss our views in more detail.

Very truly yours,



R. M. Collins  
Vice President

RMC/emp

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Carolina Power & Light Company

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October 5, 1982

DOCKET NUMBER  
PROPOSED RULE

(54)  
PR-50  
(47 FR 33980)

Mr. Ellis W. Merschoff  
Office of Nuclear Regulatory Research  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Merschoff:

Enclosed are the comments of Carolina Power & Light Company ("CP&L") regarding the Commission's proposed rule, "Personnel With Unescorted Access to Protected Areas; Fitness for Duty" 47 Fed. Reg. 33980 (August 5, 1982).

Thank you for extending until today the date upon which CP&L might mail these comments.

CP&L appreciates this opportunity to present its views on the important issues raised by the proposed rule for the Commission's consideration.

Sincerely,

*Samantha Francis Flynn*

Samantha Francis Flynn  
Associate General Counsel

SFF/dlt

Enclosure

cc: Mr. Samuel J. Chilk, Secretary  
U.S. Nuclear Regulatory Commission

*DS 10  
add E Merschoff  
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Acknowledged by card. 10/21/82 emp



Carolina Power & Light Company

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October 5, 1982

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OFFICE OF SECRETARY  
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Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Proposed Rule: Personnel With Unescorted Access to  
Protected Areas; Fitness for Duty (47 Fed. Reg.  
33980, August 5, 1982)

Dear Mr. Chilk:

Carolina Power & Light Company ("CP&L" or "Company") submits the following comments in response to the Proposed Rule of the Nuclear Regulatory Commission ("NRC" or "Commission") entitled Personnel With Unescorted Access to Protected Areas; Fitness for Duty. 47 Fed. Reg. 33980 (August 5, 1982). CP&L owns and operates the Brunswick Steam Electric Plant, Units 1 and 2, pursuant to operating license numbers DPR-71 and DPR-62, and Unit No. 2 of the Robinson Steam Electric Plant pursuant to operating license number DPR-23. The Brunswick Units are boiling water reactors, each rated at 2436 MWt. Robinson Unit No. 2 is a pressurized water reactor rated at 2300 MWt. In addition, CP&L has under construction the Shearon Harris Nuclear Power Plant, which consists of two 900 megawatt electric pressurized water reactors, pursuant to construction permits numbers 50-400 and 50-401. CP&L has, therefore, a substantial interest in the issues presented by the Proposed Rule.

The problem of "fitness for duty" should be of concern to all licensees and as such should be addressed by licensees in the course of the operation of nuclear power plants. CP&L believes, however, that the matter can best be addressed by, and is a fundamental part of, the Access Authorization Rule 10 CFR 73.56 which is pending before the Commission.

The objective of the Access Authorization Rule should be a determination to the extent reasonably possible that the individuals granted unescorted access are stable, reliable and trustworthy. If these objectives are met, there is no necessity for the proposed fitness for duty rule as a separate and distinct rule. A conscientiously administered background investigation for a minimum period of five years, psychological evaluation, drug screening, periodic reevaluations, searches, and a continued observation program significantly reduce the chance that an individual who is not fit for duty will be granted unescorted access.

In determining the need for an additional rule on this subject, the Commission should also consider the voluntary efforts by licensees to deal with the problems of drug and alcohol use and other mental and physical conditions affecting personnel performance. CP&L, for example, has adopted a written corporate policy which advises employees that an employee's use, possession or sale of narcotics, depressants, stimulants or other controlled substances while on Company business or Company property will result in disciplinary action including possible termination. Similarly, an employee's use of such substances or

the intemperate use of alcohol at any other time will result in disciplinary action, including termination, if such use might adversely affect the Company by impairing the employee's performance or reflect unfavorably upon public or governmental confidence in the manner in which CP&L carries out its responsibilities. CP&L has also instituted a company-wide employee assistance program to help employees deal with problems arising from stress and other emotional pressures. The Company is also studying other ways in which it can better provide reasonable assurance that its employees will be physically and mentally fit to perform their assigned responsibilities.

Should the Commission decide, however, to promulgate a rule in addition to the Access Authorization Rule, this proposed rule concerning fitness for duty contains language which, if retained, would make compliance by licensees impossible.

The rule, as proposed, would require a licensee to "ensure" that its employees and contractor personnel do not have unescorted access to protected areas while "under the influence of alcohol [or] using any drugs that affect their faculties in any way contrary to safety or otherwise unfit for duty because of mental or temporary physical impairments that could affect their performance in any way contrary to safety." (Emphasis added)

One need only reflect upon the difficulty and complexity of making determinations of any reasonable accuracy about the presence of drugs or alcohol in a person's system and their effects in a particular set of circumstances upon the mental capacity of an individual to realize that it would be virtually

impossible for a licensee to ensure fitness for duty. The presence of alcohol or drugs in the human body can only be established with any degree of certainty through laboratory analysis of body fluids. It is unreasonable to require analysis of body fluids each time an individual enters the protected area.

It is also impossible for a licensee to ensure that an individual is not unfit for duty because of other mental or temporary physical impairments that could affect safety.

As presently stated, therefore, the proposed addition to the regulations places upon licensees a requirement that is too severe and should not be adopted. If additional regulation is deemed necessary, its objectives should be reasonably attainable. Therefore, the word "ensure" should be deleted from paragraph (X)(1) and the words "provide reasonable assurance" substituted.

In addition, the phrase "in any way contrary to safety" is so vague and so broad as to preclude a licensee from determining what kind of behavioral condition is unacceptable. The phrase should be deleted from subparagraph (ii), line 2 and from subparagraph (iii), line 4. CP&L suggests that the following phrase be substituted for it:

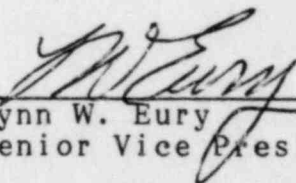
"in such a way as can reasonably be foreseen to have a significant adverse impact upon the safe operation of the facility".

In response to Commissioner Gilinsky's specific question, CP&L does not believe that it is desirable or reasonable to impose upon licensees the obligation of determining the fitness for duty of NRC employees. It is the Commission's obligation to

determine, to the extent that it is reasonably possible to do so, that its employees who are to be given unescorted access to licensed facilities are capable of performing their duties in a way that will not jeopardize the safe operation of those facilities. CP&L recommends, therefore, that NRC assume full responsibility for the fitness for duty of its personnel.

CP&L appreciates his opportunity to present its views concerning the important issues raised by the proposed rule for the Commission's consideration.

Respectfully submitted,  
CAROLINA POWER & LIGHT COMPANY

By:   
Lynn W. Eury  
Senior Vice President

LWE/dlt