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BECHTEL

Samuel J. Chilk, Secretary of the Commission
Docketing and Service Branch
United States Nuclear Regulatory Commission
Washington, DC 20555

Re: NRC Proposed Rule on Fitness For
Duty Programs (FR Vol 53, No. 184)

Dear Mr. Chilk:

This letter provides the comments of Bechtel Power Corporation on the NRC's Proposed Fitness For Duty Program Rule. NUMARC has submitted carefully considered comments on the proposed rule and its appendix. Bechtel is generally in agreement with the comments and modifications suggested by NUMARC but has the following additional comments:

In response to paragraphs 26.20(b) and 26.25 of the proposed rule, NUMARC proposes that licensees should not be required to permit non-employees to utilize their Employee Assistance Programs ("EAPs"), that contractors and vendors should have their own EAPs. NUMARC further proposes that licensees should not have responsibility for seeing that every contractor has an Employee Assistance Program.

Bechtel Power Corporation recognizes that professional programs which provide assistance to employees in dealing with drug and other problems which could adversely affect their fitness for duty are an important means of achieving the goal of a safe and drug free workplace. However, it would be unnecessarily burdensome to require separate contractor and vendor Employee Assistance Programs at nuclear sites. While contractors and vendors might attempt to utilize outside counseling services, not all contractors and vendors will be in a position to assess the qualifications of these services. Therefore, to assure that non-manual employees of contractors and vendors are fit for duty, these employees should be able to use the licensee's EAP which complies with NRC requirements. In the alternative, licensees should select qualified outside employee assistance services which comply with NRC standards and make these services available to non-manual employees of contractors and vendors. It is expected that the unions will bear responsibility for EAP efforts with respect to manual or craft employees.

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The following modification of page 36824, third column, paragraph 26.20(b) is suggested: The first sentence should substitute the phrase "employees of licensees, contractors and vendors" for the word "personnel." The sentence should read: "(b) A description of programs which are available to employees of licensees, contractors and vendors desiring assistance in dealing with drug or other problems that could adversely affect the performance of activities."

The following modification of page 36825, third column, paragraph 26.25 is suggested: Add the phrase "of licensees, contractors and vendors" after the word "employees" in the first sentence. The sentence should read: "Each licensee subject to this part shall maintain an Employee Assistance Program to strengthen fitness for duty programs by offering assessment, short term counseling referral services, and treatment monitoring to employees of licensees, contractors and vendors with problems that could adversely affect the performance of activities within the scope of this part."

Bechtel Power Corporation agrees with the additional modifications of paragraph 26.25 proposed by NUMARC.

In response to paragraph 26.28 of the proposed rule, NUMARC suggests that contractors and vendors should have their own appeal procedures which are not the responsibility of the licensee.

Bechtel Power Corporation prefers paragraph 26.28 of the proposed rule which requires licensees to establish a procedure for its employees and the employees of contractors and vendors to appeal fitness for duty determinations that could have an adverse effect on an individual's employment. Because final decisions about unescorted access of contractor and vendor employees, based on fitness for duty, are the responsibility of the licensee, the licensee should also have the final decision on any appeal. Contractors and vendors will not have the ability to reinstate access to their employees without the approval of the licensee. (See proposed rule paragraph 26.23b). This requirement should not prevent the contractor or vendor from doing the investigation in connection with an appeal and providing this information to the licensee for final decision.

The following modification of page 36826, third column, paragraph 26.28 is suggested: The phrase "or access" should be added to the end of the first sentence. The sentence should read: "Each licensee subject to this part shall establish a procedure for

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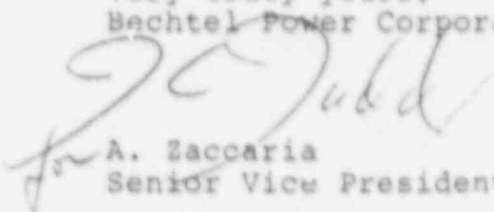
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employees and contractor/vendor employees to appeal fitness for duty determinations that could have an adverse effect on the individual's employment or access."

In response to paragraph 26.23(a) NUMARC proposes that licensees be able to choose whether contractors must adhere to the licensee's fitness for duty program or a program developed by the contractor and approved by the utility which meets the standards of the NRC proposed rule. Bechtel Power Corporation suggests that a more effective approach to fitness for duty would be to require all contractors and vendors to comply with the licensee's fitness for duty program. This uniformity will eliminate problems created when employees working in the protected area are subject to different fitness-for-duty standards and requirements, such as different drug cut-off levels.

Finally, although the proposed rule does not include requirements concerning alcohol, it is our understanding that the NRC is considering including provisions concerning alcohol in the final fitness for duty rule. There are many questions concerning alcohol testing which have not yet been resolved. For example: What blood alcohol level should be used as a cut-off? Is a breathalyzer analysis sufficiently accurate and reliable, at the designated cutoff level, to support adverse access and employment decisions? If a breathalyzer analysis is not sufficient, and a confirmatory blood test is required, careful consideration should be given to employee relations and legal concerns generated by the use of this very intrusive method of analysis. Based on the complexity of these issues, before alcohol testing is included in the NRC fitness for duty rule, the public should be given an opportunity to review and comment on the alcohol provisions.

Very truly yours,
Bechtel Power Corporation



A. Zaccaria
Senior Vice President

AZ:llb
cc: Byron Lee, Jr. - NUMARC