To: Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Via Fax To: 301-415-1101

May 31, 2013

DOCKETED
USNRC

May 31, 2013 (2:00 p.m.)

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

From: Edward Stroup, President, Local Union No. 1289 of the International Brotherhood of Electrical Workers

Re: Letter Memorandum in Opposition to the Petition of the Nuclear Energy Institute ('NRC') in Docket ID NRC-2013-0024

Dear Ms. Vietti-Cook:

I am the President of IBEW Local 1289. Local 1289 represents some 250 operating and clerical employees of Exelon Nuclear's Oyster Creek Generating Station located in Lacey Township, New Jersey, and has represented those employees since the plant commenced nuclear generation in 1969. Initially the plant was operated by Jersey Central Power & Light Company, then by the nuclear division of General Public Utilities, until it was purchased and transferred to the current licensee, Exelon Nuclear, in 2000. The Local's collective bargaining agreements since the plant's inception have always provided as the final step of the grievance procedure that disputes over discharges (permanent revocations of plant access) and suspensions (temporary revocations of plant access) must be for just cause and be arbitrated by arbitrators designated through the procedures of the American Arbitration Association if not otherwise resolved in the lower steps of the grievance procedure. As a result, since 1969, arbitration of disputed discharges and suspensions of bargaining unit Oyster Creek employees has been the final step to resolve disputes over the propriety of the discharges and suspensions and the revocation of plant access resulting from the discharges and suspensions. In all instances, the arbitrators have been professional arbitrators jointly agreed upon by the licensee and the Local from panels provided to the parties by the American Arbitration Association. In some of the past arbitration cases the discharge or suspension of the employee was upheld and in others the discharge or suspension was reversed by the arbitrator with the employee being reinstated with or without back pay. Until the advent of the Local 15/Exelon Generation litigation, never did the licensee complain that an arbitration award that reversed a suspension or discharge and restored plant access served to place the plant or the public at risk.

In most cases involving suspensions and discharges of Oyster Creek employees, the Local did not pursue the matter to arbitration, being in agreement with the licensee that the individual or individuals involved were suspended or terminated for just cause. But we can recall only one case over these many decades, a very old one, where plant and public safety was involved. A very experienced Control Room Operator tore up and flushed down a toilet a computer printout involving an equipment malfunction that caused a plant shutdown, doing so because of embarrassment at having caused the malfunction. He was terminated (his access permanently denied), and the NRC revoked his license. The arbitrator upheld the discharge, this even after the NRC had restored his license concluding that the incident was an aberration in the

operator's otherwise excellent career. But, at the very least, the propriety of his discharge was determined by a neutral and he was given a fair, impartial hearing.

On the other hand, the NEI's assertion that its member licensees have the capacity to always base access revocations objectively "on a sound record and the expert judgment of the utility's access authorization staff" is truly nonsensical. Only a couple of years ago, two Oyster Creek employees were terminated (access permanently revoked) because they sent and received pornographic emails on the computer at their work stations in the plant. Exelon Nuclear's investigation not only revealed that the two employees had done so, but also revealed that various of the plant's supervisory personnel had also sent and received pornographic emails, some exchanging pornographic emails with the two and with other bargaining unit employees or other supervisory personnel. The discipline imposed on the supervisory personnel amounted to minor suspensions (temporary revocations of access) of between one and five days. Because of the huge disparity in the discipline imposed between the bargaining unit employees and the supervisory personnel, the Local pursued the discharges to arbitration. The Company argued to the arbitrator that the two employees sent and received more such emails, and more highly pornographic ones, than the supervisory personnel. The arbitrator agreed with the Company and sustained the termination of the two employees. Thus, the two were deemed by the Company as security risks not to be trusted to have plant access, while supervisory personnel whose involvement with pornographic emails was "not so severe" received but a slap on the wrist and remained trusted to have plant access. But, again, the employees had received a fair and impartial hearing from a neutral arbitrator (albeit, as is evident from the foregoing, that the Local strongly disagrees with the arbitrator's determination since exchanging pornographic emails has no real relationship to plant and public safety and, if it does, such should have resulted in the termination of the various plant supervisory personnel as well). Several years earlier, two employees were terminated because they left the plant along with all other bargaining unit employees after contract negotiations for a successor collective bargaining agreement failed and the Local's membership went on strike during their work shift. The Licensee asserted that because they were members of the fire brigade they had no right to join their fellow workers leaving the plant. But their supervisors, who should have replaced them on the fire brigade, left the plant together with many other supervisory personnel to form a funnel through which the striking employees had to pass when leaving and to belittle the striking employees. The discharges were processed through arbitration and the arbitrator reversed the discharges and ordered the reinstatement -- restoration of access -- of both employees. One later worked to retirement and the other later became a supervisor at the plant.

When all is said and done, we know of no arbitration case in the nuclear generation industry, where a person who is a bona fide security or safety risk has been reinstated by an arbitrator, and, most importantly, the NEI cites not one such arbitration award. Since 1969, if not earlier, the industry has had hundreds if not thousands of arbitration cases involving the suspension or discharge of bargaining unit employees. (The Oyster Creek plant, which went online in 1969, remains the oldest active nuclear generation plant in the United States.) Yet we now read the NEI's petition attacking the qualifications and common sense of professional arbitrators to hear and decide whether the discharge or suspension of bargaining unit employees should or should not be upheld, and arguing that no person, except a licensee's designee, has the capacity to determine or review a determination whether a nuclear plant employee should or should not be

suspended or discharged resulting in the revocation of plant access -- not a professional arbitrator, and not even the NRC itself (see footnote 21 on page 7 of the Petition). Based upon the arguments of the Petitioner, and the language it proposes for the revision, neither the NLRB nor the EEOC would have the right to pass upon and remedy by reinstatement of access charges involving anti-union discrimination or racial, religious or sex discrimination related to the suspension or termination of nuclear plant employees, for the denial of access to the plants (inherent in the suspension or termination) would not have been made by the "trained experts" designated by the licensees, and thus would not be reviewable!

The simple truth of the matter is that the suspension or discharge of nuclear plant employees is most frequently based upon grounds having nothing whatever to do with plant security and public safety. Rather such are typically based upon such more "mundane" grounds such as asserted poor attendance (whether or not the absences are justifiable), claimed fault for a minor on-the-job accident, a dispute over the medical qualifications of an employee, a dispute over whether an employee's general work performance was or wasn't below standards, personality disputes, alleged misuse of plant computers, and a myriad of other grounds not reasonably related to security and safety of the plant and the public.[1] The NEI's contention that its members should have the power to suspend or terminate employees to the end that their plant access is denied, without being held accountable before a neutral party or agency, is obscene. While the safety of a nuclear plant's operation has always been a very justifiable concern, so, too, is safety and security in regards to the airline industry, the railroad industry, other aspects of the transportation industry, the pharmaceutical industry, and other types of industries where a large number of people or a large amount of property are at risk in the event of a serious accident or sabotage. For some 70 years, under the terms of collective bargaining agreements in all of these industries, arbitration of disputed suspensions and discharges of employees has been the procedure successfully utilized to settle such disputes without industry claims that arbitration has undermined necessary safety and security. As noted above, the NEI's Petition cites no arbitration award involving the reinstatement of any person who was a genuine threat to a nuclear plant or to the public. Not only have arbitrators successfully resolved disputes

[1] Since 1969, there have been at least 13 Oyster Creek bargaining unit employees who were terminated, their Oyster Creek plant access being permanently denied as a result of the terminations. Two involved disputes over medical qualifications, one of those being settled in the grievance procedure with reinstatement of access and the other settled in the grievance procedure without reinstatement. Four employees were terminated for off the job misconduct, one involved a DUI conviction and the other three involving criminal charges, one akin to shoplifting, another for making false statements in real estate transfer documents, and another for animal brutality. None of these were pursued to arbitration. Seven discharges involved allegations of on-the-job misconduct, one for insubordination by copying test questions that was not pursued to arbitration, one for circulating a manager's confidential email that appeared on his work computer and that led to charges filed with the U.S. Department of Labor which were subsequently withdrawn, two for sending and receiving pornographic emails on their work computer, discharges upheld in arbitration, and two for leaving the plant with the other plant employees when a lawful strike commenced during their shift but while on assigned fire brigade status, both being reinstated by an arbitrator. The last such discharge involved a control room operator who set off a plant alarm and tore up the resulting computer printout, an arbitrator sustaining the discharge even after the NRC restored the operator's license. Several of the above terminations are discussed in text above. In short, in the past 54 years, there have been only about 3 arbitration cases involving about 5 bargaining unit employees whose Oyster Creek plant access was revoked as a result of a termination that was pursued by Local 1289 to arbitration, with 2 of the 5 employees being reinstated to their jobs and to plant access by an arbitrator. To say the least, Local 1289, like so many of its sister unions, has been extremely selective in pursuing disputes involving revocations of access resulting from disciplinary terminations through the arbitration process. .

over suspensions and terminations, the federal agencies entrusted with remedying many forms of discrimination involving such suspensions and discharges have functioned without any claim that they should not be able to overturn the decision of a utility to suspend or fire an employee -- to revoke access to an employee -- because the agencies' personnel are not "trained experts" in deciding disputes over access..

The NEI's proposal to revise 10 CFR Sec. 73.56(l) (Petition at p. 11), in what amounts to a play on words, states that a licensee must have a procedure to "provide for an impartial and independent internal management review", Who is to be the "internal management" reviewer that is to be "independent"? And "independent"of what? Of the licensee's management personnel that decided to suspend or discharge the employee? The very notion that another employee of a licensee, whose employment, promotion and salary are controlled by the licensee, is being characterized as "independent" defies reality. In another affront to common sense, the proposal goes on to allow "limited review" by an arbitrator – "a third-party (non-licensee) reviewer" -- for unionized employees covered by collective bargaining agreements providing for arbitration. The proposed "limited review" would restrict an arbitrator who disagrees with the fact finding of the "internal management review[er]" to do no more than "remand" the matter back to that "internal management review[er]" for "reconsideration", and the proposal makes clear that the arbitrator would have no power whatever to overturn the access denial that had been upheld by the "internal management review[er]". Finally, and no doubt intentionally, the proposed revision makes no reference to either notice to or participation of any labor union representing employees who have been suspended or terminated. The proposed language makes clear that only the employee, and not any collective bargaining representative on behalf of the employee it represents, may challenge a decision suspending or discharging the employee. In other words, the NEI's proposed revision strips from nuclear plant employees their right, guaranteed them by the National Labor Relations Act, to have their labor union speak for and represent them in a matter as vital to them as a suspension or termination of employment and the loss of plant access associated with same.

It is truly frightening to this Union and to the employees it represents that the NEI's Petition is being expedited by the NRC simply on the grounds that there are a handful of discharge cases pending arbitration under collective bargaining agreements negotiated by the licensees and the unions representing their employees. Over the past decades there have been hundreds if not thousands of suspensions and discharges arbitrated in this industry by arbitrators jointly selected by the licensees and the unions involved and with no past award cited that can be said to have created a danger to nuclear safety and security. If the discharges involved in the pending cases are justifiable, there can be little expectation that they will not be upheld by the arbitrators involved. If they were not justifiable, the licensees can rightly expect that the arbitrators will reverse the discharges and restore access as the appropriate remedy for an unjustifiable discharge, and without endangering the plant or the public, just as arbitrators have done for decades. The very expediting of the NEI's Petition serves to give unnecessary support to those who view the NRC as being much too close to the utilities it represents and the staff employees of the NRC as too often seeking to gratify those utilities as their likely future employers. (See, e.g., New York Times, Op. Ed Opinion, March 12, 2012.) A petition designed to have the NRC strip unionized employees wrongfully suspended or discharged of the remedy of reinstatement – access restoration – through arbitration is not a trivial or

technical matter to justify expedited handling. A Petition seeking to have the NRC relieve licensees of their contractual commitment to effectively arbitrate whether an employee was or was not rightfully discharged, and whether that employee is or is not entitled to restoration of his/her job with plant access restored as a remedy, strikes at the very heart of labor relations in the nuclear industry no less than in any other industry highly concerned with safety and security.

Finally, we note that Congress, when adopting and amending the National Labor Relations Act, did not make any special or different provisions for the nuclear industry than for any other safety conscious industry covered by that Act. Congress did not exclude the effective arbitration of suspensions and discharges in the nuclear industry as a mandatory subject of bargaining under the Act, and it is still a mandatory subject of bargaining under that Act.

The NEI's Petition should be rejected by the NRC. It should not be, and is not, the NRC's function to emasculate the ability of professional arbitrators to restore plant access to unionized employees who have been wrongfully suspended or discharged where the negotiated collective bargaining agreement provides for the arbitration of suspensions and discharges.

Respectfully,

Edward Stroup, President
IBEW Local Union 1289

FAXED
12:10pm / 12:08pm

cc. Hon. Frank Lautenberg, U.S. Senator Fax: 202-228-4054 and 973-639-8723
Hon. Robert Menendez, U.S. Senator Fax: 202-228-2197 and 973-645-0502
Hon. Jon Runyon, U.S. House of Repre. Fax: 202-225-0778 and 732-279-6062
Hon. Frank LoBiondo, U.S. House of Repre. Fax: 202-225-3318 and 609-625-5008
Hon. Christopher Smith, U.S. House of Repre. Fax: 202-225-7768 and 732-350-6260

FAXED
12:14 / 12:17

FAXED
12:20 / 12:22