AFL-CIO

SYSTEM COUNCIL U-4 IBEW

REPRESENTING LOCAL UNIONS: 359, 622, 627, 641, 759, 820, 1042, 1066, 1191, 1263, 1908

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June 3, 2013

Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Docket ID NRC-2013-0024

Dear Ms. Vietti-Cook:

I am writing as the Business Manager of System Council U-4 of the International Brotherhood of Electrical Workers, AFL-CIO, CLC. The Council strongly opposes the NEI's petition for rulemaking. The proposal undermines collective bargaining without any demonstrable positive effect on safety. The NRC should reject the petition.

The System Council itself is composed of eleven different IBEW Local Unions throughout Florida, including IBEW Local 359 in Miami-Dade County and IBEW Local 627 in Ft. Pierce. The System Council serves as the bargaining agent of employees employed by Florida Power & Light ("FPL"). The bargaining unit includes employees employed at FPL's two nuclear power plants, Turkey Point and St. Lucie. Turkey Point is located in Miami-Dade County, Florida and came on-line in 1969. Bargaining unit members at that plant are represented by Local 359. The St. Lucie plant is located in St. Lucie County, Florida, and came on-line in 1976. The bargaining unit members there are represented by Local 627.

The System Council and FPL have engaged in collective bargaining over wages, hours, and working conditions of those employees since the 1950s. Prior to that individual IBEW Local Unions began collectively bargaining with FPL in 1942. Few unionized workplaces in Florida have so long a history of collective bargaining.

In that time frame we have addressed literally thousands of grievances and hundreds of arbitrations, many if not most of which addressed discipline or discharge of employees for a host of reasons. The Council and the Union have a longstanding and settled practice of arbitrating even very complex disputes. In the time that the System Council has bargained on behalf of FPL's workers there have been two strikes of which I am aware, and none at all since 1973. That is due in no small part to the trust the parties have placed in grievance arbitration as a means of resolving their disputes.

The Council has represented nuclear power plant employees for 44 years. In that time disagreements over access-related issues have been very few in number; no more than half a dozen grievances relating to nuclear power plant access have arisen in those years. Prior to 2012 only one of those grievances advanced so far as arbitration. The parties settled others – including one where the parties agreed that access rights would be reinstated – and the Union decided to withdraw one. Not once did FPL contend that access issues were not subject to arbitration.

The one access-related grievance that advanced to arbitration prior to 2012 concerned the termination of "B," who had worked as a Senior Nuclear Plant Operator at FPL's St. Lucie Plant. FPL terminated him after a psychologist determined that "B" was not fit for continued unescorted access to the nuclear power plant. That arbitration took place in 2002. In that case FPL claim that the arbitrator could not adjudicate issues relating to plant access.

Arbitrator Roger Abrams noted that the Union was "rightfully concerned that the Company not shortcut 'just cause' protections by using an alternative psychological evaluation system. When dealing with people's work lives, management cannot simply waive the 'red flag' of 'safety in a nuclear environment,' and ignore the essential elements of fairness that inure in the 'just cause' standard." He went on to state "[t]hat is not what the Company did here." The Company prevailed; it had just cause to terminate "B."

On the other hand, FPL itself interjected access issues into what began as a traditional "just cause" case in 2008, in a case concerning "C," who had been terminated from his position as a mechanic at the St. Lucie plant. At the arbitration hearing FPL presented its Medical Review Officer, Dr. Gary Schecodnic, who had met with "C" just prior to the termination to address whether "C" was "trustworthy" enough to maintain access to a nuclear power plant. Dr. Schecodnic found there were no issues that would preclude "C" from such access, but at arbitration and apparently under pressure from FPL, he testified based upon some documents he later saw "he would change his conclusion."

The arbitrator stated that "[i]t is regrettable that the Company persuaded the doctor to reverse his findings in [C's] case with no discernible change in the grounds for doing so and it is regrettable that the doctor allowed himself to be so persuaded." The arbitrator further found that the doctor's original conclusion must stand; he directed that "C" be reinstated to employment.

In 2012 FPL changed course and refused to arbitrate grievances where access rights were at issue. The Council has filed a lawsuit in the U.S. District Court for the Southern District of Florida to compel FPL to arbitrate. This is the first time that FPL has claimed that access rights are beyond the purview of an arbitrator, a claim at odds with the parties' past practice and bargaining history.

We have faith in the arbitral process; we do not have faith in giving an employer like FPL unilateral control over the careers of our members without any prospect of arbitral review. Simply put, the grievance process works. That so few access-related cases have gone to arbitration is a testament to that fact. The arbitral process works. The "B" decision epitomizes

how the system can and does function. There the arbitrator undertook a serious and thorough examination of FPL's decision to terminate a long-term employee, which arose in connection with a denial of access. Indeed, he agreed ultimately with the company – as an arbitrator should if the company acts based on objective factors relevant to access issues.

On the other hand, we have encountered an example of how an employer may abuse access rights to undermine a negotiated "just cause" provision. In the "C" case FPL clearly pressured its Medical Review Officer, a doctor responsible for addressing access rights, to find the grievant unsuitable for work in a nuclear power plant. The arbitrator went out of his way to note that this was improper and unfortunate – and yet this very sort of pressure would be undiscoverable and unreviewable under the rule change proposed by NEI.

Our agreements have obligated that FPL have just cause for discipline and discharge for more than 50 years. The proposal at hand destroys that concept, effectively rendering nuclear power plant employees at will, for by removing them from the plant, they are removed from their very livelihood, without meaningful review by an objective third party. Notably, if an arbitrator exceeds his authority and acts beyond the bounds of the law, then the employer still has a right of appeal; if under NEI's proposed rule an employer exceeds its authority and acts beyond the bounds of the law, its decision may not be appealed in any meaningful manner.

Making the petition all the more egregious is that NEI itself has not cited any incidents where safety has been compromised because an arbitrator has reinstated an employee to work at a nuclear power plant. None has occurred in our more than four decades' experience representing nuclear power plant workers. Giving the employer complete and completely unreviewable control over access has no bearing on safety, frankly.

Safety lies at the heart of our organization, which is committed top to bottom in making our members' workplace as safe as it can be. Frankly, it is an affront to think that we would use arbitration to place unsafe individuals into the workplace – endangering our own members, other employees, or the public we serve.

In conclusion, we see no reason for the Commission to amend its regulations. Public safety would not be served, but collective bargaining would be undermined. The Council respectfully requests that the petition be denied.

Respectfully,

Gary J. Aleknavich
Business Manager

GJA/ct
File:

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Facsimile Cover Sheet

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See Attached