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September 21, 1999

Roy P. Lessy, Jr.
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VIA E-MAIL AND REGULAR MAIL

U.S. Nuclear Regulatory Commission
Annette L. Vietti-Cook, Secretary of the Commission
Attention: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Re: FirstEnergy Nuclear Operating Company, Pennsylvania Power Company and
Duquesne Light Company (Beaver Valley Power Stations, Units 1 & 2), Dockets
Nos. 50-334-LT & 50-412-LT)

Dear Ms. Vietti-Cook:

Enclosed for filing, please find the Answer of FirstEnergy Nuclear Operating Company and Pennsylvania Power Company in Opposition to the "Petition to Waive Time Limits and Supplemental Comments of Local 29, International Brotherhood of Electrical Workers" in the above-captioned docket. Copies of the Answer have been served upon the parties and the Petitioner by E-mail and regular mail, as reflected in the enclosed certificate of service.

Also enclosed is the "Affidavit of Tim D. Martin on Beaver Valley Staffing."

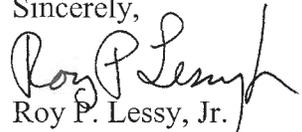
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AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

Ms. Vietti-Cook
September 21, 1999
Page 2

If there are any questions relative to service of the enclosed filing, please contact me at (202) 887-4500. Thank you for your cooperation.

Sincerely,



Roy P. Lessy, Jr.

Counsel for FirstEnergy Nuclear
Operating Company, Pennsylvania Power
Company

Enclosures

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)
)
Duquesne Light Company, and)
FirstEnergy Nuclear Operating Company,) Docket Nos. 50-334-LT & 50-412-LT
Pennsylvania Power Company)
)
(Beaver Valley Power Station, Units 1 and 2)) (License Nos. DPR-66, NPF-73)
_____)

**ANSWER OF FIRSTENERGY NUCLEAR OPERATING COMPANY AND
PENNSYLVANIA POWER COMPANY IN OPPOSITION TO PETITION
TO WAIVE TIME LIMITS AND SUPPLEMENTAL COMMENTS OF
LOCAL 29, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

I. INTRODUCTION

By electronic filing dated approximately midnight on September 15, 1999, Local 29 International Brotherhood of Electrical Workers (“Local 29”) filed a “Petition to Waive Time Limits in 10 C.F.R. § 2.1305 and Supplemental Comments” relative to the above-referenced pending license transfer application. By way of background, in a final Memorandum and Order dated July 23, 1999, this Commission denied the Petition to Intervene filed by Local 29. CLI-99-23, 49 NRC ____ (July 23, 1999). In CLI-99-23, this Commission noted:

Local 29 has filed a “petition to intervene” but has explicitly stated that it has not requested a hearing. In the absence of a hearing request, there is no potential adjudicatory proceeding in which to intervene. Accordingly, we must deny Local 29’s “petition to intervene” and treat it as a submission of comments on the license transfer application pursuant to the 10 C.F.R. § 2.1305.

Id., Slip Op. at p.2.

Since that Memorandum and Order, the pending license transfer application relative to Beaver Valley has been duly reviewed and processed by the NRC staff, with every indication

that the Applicants' requested completion date of September 30, 1999, in order to permit timely closing of the transaction, and will be met. Since that time on June 28, 1999, the U.S. Department of Justice issued an "early termination letter" approving the antitrust aspects of the transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act. On July 15, 1999, the transaction was approved by a Final Order from the Pennsylvania Public Utility Commission and on September 17, 1999, the transaction was also approved by Order of the Federal Energy Regulatory Commission. The FERC expressly found that the asset swap transaction is "consistent with the public interest." FERC Docket No. EL 99-83--000, "Order Approving Disposition of Jurisdiction Facilities," 88 FERC ¶ 61248, Slip Op. at p.7 (September 17, 1999).

For the reasons stated below, Local 29's petition to waive time limits should be summarily denied, as should the remainder of its petition.

II. LOCAL 29'S SUPPLEMENT CONTINUES TO FAIL TO MEET NRC REQUIREMENTS

As noted above, there is "no proceeding" ongoing for which Local 29 can intervene. Its intervention petition was denied by final order of this Commission on July 23, 1999, and no appeal or subsequent action was taken by Local 29 with respect to the Commission's final order.

Second, this midnight filing also fails to satisfy NRC's intervention pleading requirements, even if there were the requisite "proceeding", Local 29 continues to fail to proffer at least one valid contention and, accordingly, it has continued to fail to meet the requirements of 10 C.F.R. § 2.1306(b)(2) and (b)(3) in order to be permitted to participate as a party in a license transfer proceeding. Third, and as explained below, Local 29 fails to address the requisite five factor lateness test set forth in 10 C.F.R. § 2.714(a)(1)(i) - (v).

In addition, even if its petition had been timely filed, and even if there had been an ongoing proceeding in which to file that petition, Local 29 again fails to request a proper hearing on the pending application. Local 29's only mention of a hearing appears to be a post-approval hearing which is not contemplated in Subpart M of the NRC's regulations. Petition at p. 7. In its Petition, Local 29 requests that the NRC "hold such hearings or other proceedings as may be necessary to ensure the safe operation of Beaver Valley 1 and 2 if the Application is granted." Thus, the "hearing request" appears conditional and post-approval.

Finally, Local 29's purported supplement should also be denied because it continues to attack the Commission's regulations, by trying to impose an advance staffing requirement on the transferee, FENOC, which does not exist. 10 C.F.R. § 50.34(b)(6) provides that with regard to facility operation, the Applicant must submit its "organizational structure, allocations or responsibilities and authorities and personnel qualifications required." There is, thus, no NRC regulatory requirement that a transferee identify with particularity its plans for staffing each and every activity associated with facility operation. Local 29 cannot wait until the penultimate point of the 10 C.F.R. §50.80 approval process to raise any objections it may have, thus derailing the NRC process. As it will be discussed below with respect to the factors used in evaluating late-filed petitions, particularly factor 3 as to whether or not the Petitioner's participation may reasonably be expected to assist in developing a sound record, Local 29's counsel has failed to return previous telephone calls to both the undersigned counsel and FirstEnergy's labor counsel, made for the purpose of discussing its original NRC petition. Rather, it has waited until virtually the last minute to complain to this Commission in an attempt to delay NRC approval of the license transfers necessary to close this transaction. As noted above, the FERC has recently

leverage. As the Commission concluded in Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 167 (1993):

Finally, the fifth factor the potential for delay if the [late filed intervention] petition is granted, weighs heavily against Petitioner. Granting . . . [Petitioner's] request will result in the establishment of an entirely new formal proceeding, not just the alteration of an already established hearing schedule.

Given such potential for delay, the late-filed petition was denied by the Commission. That precedent should be, at least, equally as applicable here, where a final Commission Order on intervention has been issued and, there is no adjudicatory proceeding in which to intervene.

Nevertheless, in reviewing the instant petition, we will address the factors governing late-filed intervention set forth in 10 C.F.R. § 2.714(a)(1)(i)-(v). Those five factors are:

- (i) Good cause, if any, for failure of the Petitioner to file on time;
- (ii) The availability of other means whereby the Petitioner's interests will be protected;
- (iii) The extent to which the Petitioner's participation may reasonably be expected to assist in developing a sound record;
- (iv) The extent to which the Petitioner's interest will be represented by existing parties; and
- (v) The extent to which the Petitioner's participation will broaden the issues or delay the proceeding.

Briefly addressing these factors, it is clear that Local 29's attempted supplement should be denied. First, there is no good cause for Local 29's failure to file on time with regard to this matter. As noted above, the filed license transfer application was in compliance with 10 C.F.R.

§ 50.34(b)(6) in all respects including that related to the transferee's organizational structure, allocations of responsibilities and authorities and personnel qualifications requirements. No NRC regulatory requirements require that position-by-position staffing information be provided by the transferee in a timeframe demanded by Petitioner and not required by NRC regulations. Moreover, Local 29 failed to appeal or seek reconsideration of the Commission's final order of July 23, 1999 in a timely manner. There is thus no good cause for Local 29's delay under NRC regulations.

Second, as to other means to protect the Petitioner's interest, there are normal labor and grievance procedures, numerous other opportunities before other federal agencies and/or courts, as well as the availability of 10 C.F.R. § 2.206 procedures. Petitioner has many other means available to it raise these points rather than attempting to turn the NRC 10 C.F.R. subpart M process on its head, in the face of an uncontested and final Commission intervention order. In that regard, it should be noted that Petitioner is now seeking to raise similar, if not the same, economic issues before the U.S. District Court for the Western District of Pennsylvania¹ and before the Pennsylvania P.U.C.²

As to the third factor, whether Petitioner's participation may reasonably be expected to assist in developing a sound record, there is no indication that this would occur by this Petitioner at the NRC. Petitioner's counsel took no follow-up action with the undersigned after the Commission's final order of July 23, 1999 nor did Petitioner's counsel return telephone calls from the undersigned counsel and labor counsel for FirstEnergy, or take other steps in an attempt

¹ IBEW v. FirstEnergy, Inc. [sic] and Duquesne Light Company, Civil Action 99-1490, filed September 15, 1999.

² "Petition For Recission of Order of Local 29, IBEW," Pa.PUC Docket A-110150F.0020." filed September 15, 1999.

to in good faith resolve their comments. Accordingly, this factor also weighs heavily against Petitioner.

As to whether Petitioner's interest will be represented by existing parties, since there is no proceeding, there are no existing parties given the very late nature of these proffered supplemental comments. Finally and most importantly, as to the factor of whether Petitioner's actions or participation will broaden the issues or delay the proceeding, Petitioner's actions are clearly designed to delay this process. As indicated above, we believe the Commission's reasoning in Texas Utilities, supra CLI-93-4 controls and that the potential for delay is great and the benefit minimal.

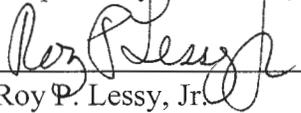
As noted above, Local 29 has failed to affirmatively address the five factor lateness test set forth in 10 CF.R. § 2.714(a)(1)(i)-(v). The failure to do so constitutes an independent, significant ground for this Commission to summarily reject this petition. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-93-11, 37 NRC 251, 255 (1993).

The transferee, FENOC, must review and evaluate the current staffing situation at Beaver Valley and in so doing, make legitimate staffing adjustments it deems appropriate, and FENOC will continue to comply with all applicable NRC requirements related thereto. In that regard, staffing levels are routinely reviewed and addressed by the NRC Staff in the course of NRC's existing oversight of NRC licensees, post-transfer and closing of this transaction. FENOC management is committed to staffing Beaver Valley at a level that ensures the continued safe operation of the Units while taking into consideration the benefits of being a consolidated nuclear operating company,

CONCLUSION

For the reasons stated above, FENOC respectfully requests that the Commission both deny Local 29's request to waive time limits as well as the balance of its proffered supplement, including its ambiguous references to a hearing. FENOC has no objection to the balance of the Petition being referred to the NRC Staff as a late-filed comment³, without good cause therefor, so long as such referral does not adversely impact the requested September 30, 1999 completion date.

Respectfully submitted,



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& FELD, L.L.P.
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(330) 384-5224

Counsel for
FirstEnergy Nuclear Operating Company,
Pennsylvania Power Company

³ In order to facilitate the Staff's consideration thereof, we have attached hereto the responsive "Affidavit of Tim D. Martin On Beaver Valley Staffing" as well as provided copies of this pleading and affidavit to the NRC Staff.

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CERTIFICATE OF SERVICE

I hereby certify copies of the “Answer of FirstEnergy Nuclear Operating Company and Pennsylvania Power Company in Opposition to Petition to Waive Time Limits and Supplemental Comments of Local 29, International Brotherhood of Electrical Workers” were served upon the persons listed below by e-mail, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 21st day of September, 1999.

Office of the Secretary
U.S. Nuclear Regulatory Commission
Att’n: Rulemakings and Adjudications Staff
Washington, D.C. 20555
(E-mail: SECY@NRC.gov,
elj@NRC.gov)

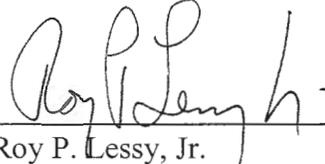
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Roy P. Lessy, Jr.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Duquesne Light Company, and)
FirstEnergy Nuclear Operating Company,) Docket Nos. 50-334-LT & 50-412-LT
Pennsylvania Power Company)
)
(Beaver Valley Power Station,)
Units 1 and 2) (License Nos. DPR-66, NPF-73)
_____)

AFFIDAVIT OF TIM D. MARTIN ON BEAVER VALLEY STAFFING

I. Introduction and Background

I, Tim D. Martin, President of Tim D. Martin & Associates, Inc., do hereby affirm and state that:

1. I am experienced in all aspects of the nuclear industry, including operations, utility organization, engineering, and the service industry. I have provided a broad spectrum of services to many electric utilities with nuclear power plants, including AmerenUE, American Electric Power, Arizona Public Service, Baltimore Gas & Electric, Carolina Power & Light, Cleveland Electric Illuminating, Commonwealth Edison, Detroit Edison Company, Duquesne Light Company, Entergy, FirstEnergy Operating Company, Florida Power and Light, Florida Power & Light, Gulf States Utilities, GPU Nuclear, Houston Lighting & Power, Illinois Power Company, Iowa Electric Light & Power, Kansas City Power & Light, Louisiana Power & Light, New Hampshire Yankee, Niagara Mohawk Power Company, Northern States Power, Omaha Public Power District, Pacific Gas & Electric Company, Pennsylvania

Power & Light, Philadelphia Electric Company, Southern California Edison, TVA and Yankee Atomic Electric. In addition, I have provided consulting services to nuclear steam supply system vendors, architect-engineers, legal and other service firms in the nuclear industry.

2. I received my BS in Engineering from the United States Naval Academy, and his MBA from George Washington University. I am a licensed Professional Engineer.

3. As head of Tim D. Martin & Associates, I direct the firm's engagements, specializing in analysis of staffing, organizational design, costs, and business planning at nuclear power plants. In connection therewith, we have developed an established and unique approach and database for examining the staffing situation of nuclear power plants. Tim Martin & Associates is an acknowledged industry expert on nuclear plant staffing, organizational design and costs, and has provided expert testimony on these and other subjects, has been asked to speak and attend industry meetings that deal with staffing and related issues, and been quoted in trade publications.

4. In addition to staffing and cost analyses, I have been a resource to Presidents and Vice Presidents of nuclear utilities to assist in the identification and solution of complex management and technical issues aimed at improving plant performance. I have investigated a myriad of issues such as career development, incentive compensation programs, reorganizations, and the creation and implementation of management control systems.

5. Prior to establishing Tim D. Martin & Associates in 1986, I was the Nuclear Energy Practice leader at Booz, Allen & Hamilton. At Booz, Allen and I directed many projects dealing with reviews and analyses for nuclear plants under construction and in operation, including prudence reviews and providing testimony in support of the utilities constructing nuclear plants.

6. Prior to joining Booz, Allen & Hamilton, I was General Manager for NUTECH, a nuclear engineering consulting firm, where I managed the Bethesda and Atlanta offices. I directed the nuclear engineering services, including design and implementation of modifications to major plant systems.

7. I also served in the nuclear navy, the last tour being as Engineer Officer of a nuclear powered submarine where he was responsible for all aspects of the nuclear plant and ship systems. This position was similar to a plant manager of an operating commercial nuclear plant and provided me with a thorough background and experience base in nuclear operations, maintenance and training requirements of a nuclear power plant.

8. Our services to the nuclear utility industry have included direction of major engineering modifications, such as the Mark I containment program which required significant structural and piping changes to 25 plants, some in operation and others still under construction. I also developed and implemented major operational programs, such as emergency preparedness and training of licensed operators. I have worked with utilities in preparation for and during their initial plant operations, which utilized his complete knowledge of all aspects of nuclear power, including operations and maintenance.

II. Purpose of the Staffing Update -

9. FENOC has in the past retained Tim D. Martin & Associates, Inc. to conduct staffing analyses, outage studies, organization reviews and other management consulting engagements.

10. Tim D. Martin & Associates has conducted over 130 staffing analyses at nuclear plants in the past 12 years, and I am familiar with Beaver Valley and the Perry Nuclear Power Plant and Davis-Besse Nuclear Power Station both of which are operated by FENOC. Our staffing database includes detailed staffing information from virtually every U.S. utility that operates a nuclear plant and several foreign utilities.

11. In December 1998, Tim D. Martin & Associates was asked by FENOC to conduct a Nuclear Staffing Analysis Update of the Staffing Benchmarking Analysis that was completed on February 27, 1998 for the Beaver Valley Power Station at the request of the current operator, Duquesne Light. Staffing is a significant part of non-fuel operations and maintenance costs and should be included in examinations of nuclear plant performance. FE was examining the staffing situation at Beaver Valley as part of a total plant review in association with the larger Asset Exchange transaction between FirstEnergy and Duquesne Light.

III. Approach and Methodology –

12. Our approach to the staffing analysis was similar to that used in the other 130 staffing analyses conducted by Tim Martin & Associates. This approach consisted of four basic steps:

1. Assigning the Beaver Valley personnel to one of 45 work functions that are performed by staff at all nuclear plants,
2. Developing benchmark staffing values that are customized to the Beaver Valley plant,
3. Comparing the actual numbers to the benchmark staffing values, and
4. Identifying specific functions for management attention by comparing the Beaver Valley overall situation to other nuclear plants.

13. Assigning each Beaver Valley person and contractor to one of the 45 functions in our database allowed direct comparison of the Beaver Valley staffing to the benchmark staffing. To assign Beaver Valley personnel to these functions required examination of the latest organization charts and interviews with selected personnel at the plant. Since a similar staffing analysis had been completed earlier in 1998, the update required identifying the changes in both Duquesne Light and contractor personnel.

14. Benchmark staffing levels were then developed for each function using the methodology employed in past staffing analyses. Using regression analysis, a model was developed for each of the 45 functions required to operate and maintain a nuclear plant. Each regression model identified the independent

variables that explain the variation in the functional staffing among the best performing nuclear plants in the database. These independent variables include factors such as age of the plant, capacity in MW, NSSS vendor, union status of each function, and other factors that can be measured at each plant.

15. The model provides a quantitative method to normalize the design and operating parameters of the best performing nuclear plants to those of Beaver Valley. **Best performer plants** are those US nuclear plants that have a 3-year record of being in the best half of capacity factor, non-fuel O&M costs and SALP scores. By substituting Beaver Valley values into the regression models, the average staffing in each function at best performing plants, normalized to Beaver Valley, was developed.

16. In addition to the Best Performer benchmark, a **Lowest Staffing** benchmark was developed. This benchmark represents the staffing at the lowest staffed best performing plant normalized to the characteristics of Beaver Valley. A separate Lowest Staffed benchmark was developed for each of the 45 functions being performed at Beaver Valley. This process produced benchmark staffing levels for a virtual plant because no plant has all the lowest values.

17. To conduct the staffing analysis update in December 1998, Tim D. Martin & Associates interviewed the officers at Beaver Valley and individuals in the Human Resources organization. We also reviewed relevant documents including the following documents:

- Beaver Valley Staffing Analysis dated February, 1998 conducted by Tim D. Martin & Associates

- Beaver Valley organization charts dated October 28, 1998
- Contractor listing dated October 31, 1998.

18. This information was used to assign Beaver Valley personnel, including contractors, to one of 45 functional categories required to operate and maintain a nuclear plant. Once the total count was complete, the Beaver Valley staff assigned to the 45 functions, and the benchmarks developed, the actual functional count was compared to the benchmark values.

IV. Results of the Staffing Update and Conclusion –

19. Results of the Beaver Valley Nuclear Plant Staffing Analysis Update in December 1998 were:

- **Total staffing** was 1,420 personnel, which included 1,222 Duquesne Light employees and 198 long-term contractors.
- Benchmark **Best Performer Staffing** was 1,304, and benchmark **Lowest Staffing** was 980.
- Beaver Valley actual staffing was **9% above the best performer benchmark and 45% above the lowest benchmark.**

20. These results indicate that Beaver Valley staffing reductions can be made by FENOC as it works toward improving Beaver Valley's overall performance.

A handwritten signature in black ink, appearing to read "Tim A. ...". The signature is written in a cursive style with a large initial letter.

State of New York

County of Monroe

Subscribed and sworn before me a Notary Public this day of September,
1999.

My commission expires 10/28/99.

Ann M. Hurlbut

Notary

ANN M. HURLBUT
Notary Public, State of New York
Monroe County No. 5067982
My Commission Expires 10/28/99

Notary Public in and for the state of New York.

approved this transaction and the Pennsylvania Public Utilities Commission has also approved the transaction. At bottom, Local 29's actions are a last minute attempt to gain economic leverage, and nothing more.

In that regard, as previously noted in our original "Answer of FirstEnergy Nuclear Operating Company and Pennsylvania Power Company in Opposition" to Local 29's Petition to Intervene (June 16, 1999), the economic interests of Local 29, relating to union hiring decisions by FENOC at Beaver Valley, are outside the zone of interests protected by the Atomic Energy Act. See Quivira Mining, CLI-98-6, 48 NRC at 6. It has been clearly held that a claim of financial interest in an application proceeding does not confer standing under the Atomic Energy Act of 1954, as amended. See Texas Utilities Electric Company (Comanche Peak Steam Electric Station Unit 2), LBT-92-37, 36 NRC 370, 375 (1992), citing Houston Lighting & Power Co. (Allen's Creek Nuclear Generating Station, Unit 1) ALAB-582, 11 NRC 239, 242. Therefore, Local 29 lacks standing because its arguments, in essence, are really economic and attempted economic leverage positions but do not constitute the requisite legally protected interest under the Atomic Energy Act sufficient to establish the Local 29's standing with regard to this pending application. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

**III. PETITIONER'S REQUEST TO WAIVE TIME LIMITS AND
TO SUBMIT ADDITIONAL COMMENTS SHOULD BE DENIED
AS A NONTIMELY INTERVENTION PETITION, FAILING
TO MEET APPLICABLE NRC REQUIREMENTS**

As noted above, the Commission previously noted and determined in CLI-99-23 that Local 29's petition should be denied and since this was the only petition that was filed, there is no adjudicatory proceeding in which to intervene. Local 29's tactic is clearly that of delay for