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September 23, 1999

VIA E-MAIL AND FIRST CLASS MAIL

Office of the Secretary
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

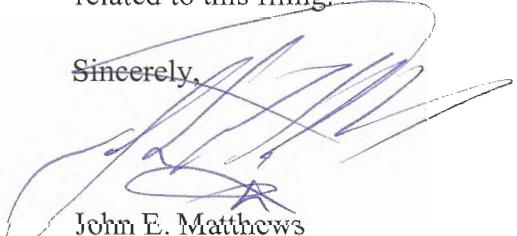
Re: FirstEnergy Nuclear Operating Company, Pennsylvania Power Company, and Duquesne Light Company (Beaver Valley Power Station, Units 1 and 2), Dockets Nos. 50-334-LT and 50-412-LT

Dear Ms. Vietti-Cook:

Enclosed for filing please find the Answer of Duquesne Light Company to Petition to Waive Time limits and Supplemental Comments of Local 29, International Brotherhood of Electrical Workers in the above-captioned matter.

Copies of this Answer have been served upon the parties and the Petitioner by e-mail or facsimile, and by first class mail, in accordance with 10 CFR § 2.1313, as indicated in the Certificate of Service attached to the Answer.

Please contact me at 202-467-7524 if you have any questions or need any additional information related to this filing.

Sincerely,

John E. Matthews

JEM:kmb

Enclosure

cc: Attached Distribution List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

1999 SEP 27 P2:18

In the Matter of)	
FIRSTENERGY NUCLEAR)	Docket Nos.
OPERATING COMPANY,)	50-334-LT
PENNSYLVANIA POWER COMPANY,)	50-412-LT	
And)	
DUQUESNE LIGHT COMPANY)	
(BEAVER VALLEY POWER)	(License Nos. DPR-66
STATION, UNITS 1 AND 2))	NPF-73)

**ANSWER OF DUQUESNE LIGHT COMPANY OPPOSING
PETITION TO WAIVE TIME LIMITS AND SUPPLEMENTAL COMMENTS OF
LOCAL 29, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

I. INTRODUCTION

Duquesne Light Company (DLC), one of the co-applicants in the above-captioned proceeding involving the proposed transfer of Operating Licenses No. DPR-66 and NPF-73 for the Beaver Valley Power Station, Units 1 and 2 (BVPS),^{1/} hereby respectfully submits the following Answer to the Petition to Waive Time Limits and Supplemental Comments of

1/ On May 5, 1999, DLC and FirstEnergy Nuclear Operating Company (FENOC) filed a joint application requesting the consent of the Nuclear Regulatory Commission (NRC or Commission) to the transfer of DLC's ownership interests in BVPS to Pennsylvania Power Company and DLC's operating authority over BVPS to FENOC and the approval of certain conforming administrative license amendments associated with the transfer (Application).

Local 29, International Brotherhood of Electrical Workers (Local 29), dated September 15, 1999.

In its petition, Local 29, on behalf of its members, (A) seeks leave to interject at the eleventh hour untimely "Supplemental Comments" regarding issues that are collateral to the pending Application, (B) requests that the NRC hold hearings or other proceedings which are both untimely requested and outside the scope of the NRC's rules governing the consideration of license transfer applications, and (C) seeks to raise irrelevant and immaterial issues and to impose requirements on the Applicants beyond those provided for by the NRC's rules and practice. DLC respectfully requests that the Commission deny Local 29's Petition and decline to invoke the various extraordinary procedures requested therein.

II. DISCUSSION

A. Local 29's Supplemental Comments are Untimely

As discussed in greater detail in 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" dated September 21, 1999, Local 29's Supplemental Comments are untimely, and its request for leave to file late fails to meet the NRC's five factor test for untimely intervention. *See* 10 CFR § 2.714(a)(1)(i)-(v). DLC submits that Local 29 has failed to show good cause for its late-filed Supplemental Comments. Acceptance of the union's comments under these circumstances would be unfair and is inconsistent with "the public interest in the timely and orderly conduct of [NRC] proceedings." *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 648-649 (1979).

B. Local 29 Requests Extraordinary Hearing Procedures Which Are Untimely and Outside the Scope of the Governing Rules

In promulgating the “Streamlined Hearing Process for NRC Approval of License Transfers,” the Commission explicitly acknowledged “the need for expeditious decision making from all agencies, including the Commission,” for transactions involving license transfers, and opined that “timely and effective requests for transfers on the part of the Commission is essential.” 63 FR 66721, 66721 (Dec. 3, 1998). Therefore, the Commission developed procedures which were “designed to provide for public participation in the event of requests for hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.” 63 FR at 66722. As such, the Commission’s procedures were fashioned to “provide a fair process to consider any issues raised concerning license transfers while still proceeding in an expedited manner.” *Id.*

In accordance with the procedures set forth in Subpart M, Local 29 filed a timely petition to intervene regarding the pending Application on June 3, 1999. At that time, Local 29 explicitly stated that it was not requesting a hearing, and thus, in the absence of such a request, the Commission had no choice but to deny the petition and determine to treat it “as a submission of comments on the license transfer application.” CLI-99-23, 49 NRC ____ (July 23, 1999). Now, at the eleventh hour in the NRC’s review process, Local 29 seeks to interject additional comments and request extraordinary hearing procedures that are provided for nowhere in the NRC’s rules governing the streamlined hearing process for license transfer applications. These extraordinary hearing procedures conflict with the very underlying purpose of the Subpart M rules, and granting any such requests not only would unfairly prejudice the Applicants involved

here, but also would undermine the public interest in a fair and orderly decision-making process for reviewing license transfer applications.

C. Local 29's Supplemental Comments Raise Issues that are Irrelevant, Immaterial and Beyond the Scope of NRC's Requirements

Local 29's Supplemental Comments must also be rejected because the staffing issues raised in the petition are not relevant and material to the findings the Commission must make to consent to the BVPS license transfer and approve the conforming administrative license amendments associated with the transfer. 10 CFR § 2.1306(b)(2)(ii). NRC regulations provide that Applicants must submit their organizational structure for NRC review, and the regulations establish specific operator and senior operator staffing requirements. *See* 10 CFR §§ 50.34(b)(6), 50.54(m). DLC currently meets these NRC requirements, and FENOC has committed to continue to meet all of these requirements after the license transfer occurs. Application at 10-11. In evaluating license transfer applications, the Commission does not require applicants to demonstrate that the staffing levels will exceed the requirements set forth in NRC regulations or the plant's licensing basis. Accordingly, the issues which Local 29 seeks to raise are not relevant and material to the findings that the Commission must make in this proceeding.

To the extent that Local 29 is advocating that the Commission impose stricter requirements on FENOC in connection with the proposed license transfer than those imposed by the Commission's own regulations, such a contention constitutes a collateral attack on those regulations. However, petitioners are not permitted to raise issues that collaterally attack the Commission's regulations in licensing proceedings. *Seabrook CLI-99-06*, 49 NRC at ___, slip op. at 15; *see also Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2),

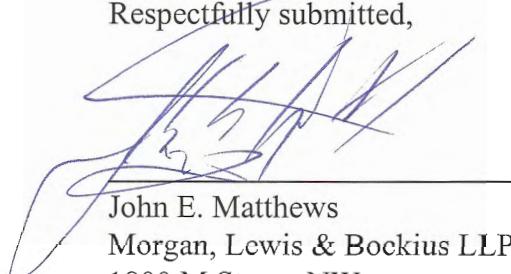
LBP-82-106, 16 NRC 1649, 1656 (1982); *accord Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998).

DLC remains committed to assuring that BVPS staffing levels throughout the transition process will comply with all NRC requirements. Moreover, contrary to Local 29's speculation, the additional personnel, resources, and nuclear operating experience available to FENOC through its operation of multiple nuclear units at multiple sites, coupled with the operating experience of the BVPS nuclear organization being transferred to FENOC by DLC, will likely enhance the continued safe operation of BVPS. Thus, Local 29's Supplemental Comments are not only untimely, but also substantively unfounded.

CONCLUSION

For all the foregoing reasons, DLC respectfully requests that the Commission deny Local 29's request for leave to file untimely Supplemental Comments. DLC also reiterates the Applicants' request that NRC review and approve the pending Application by September 30, 1999.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the Answer of Duquesne Light Company 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 or facsimile, with a conforming copy deposited in the U.S. mail, first class, postage prepaid, this 23rd day of September, 1999.

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U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
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(E-mail: secy@nrc.gov,elj@nrc.gov)

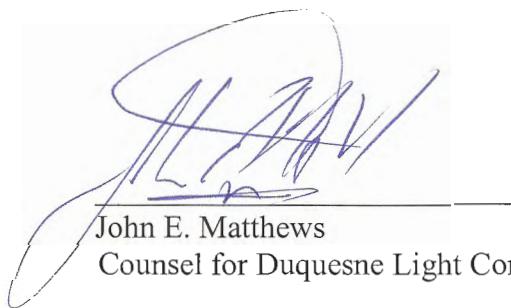
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