

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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_____))
In the Matter of))
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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)
_____))

OFFICE
FOR
ADJUTANT

ANSWER OF DUQUESNE LIGHT COMPANY
TO PETITION TO INTERVENE 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 submits the following Answer to the Petition to Intervene, dated June 3, 1999, of Local 29, International Brotherhood 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).

Electrical Workers (Local 29). In its petition, Local 29, on behalf of its members, seeks to intervene in this proceeding and urges the Commission to delay its decision regarding the proposed license transfer pending certain staffing decisions by FENOC.^{2/}

As shown below, Local 29's petition fails to demonstrate standing on Local 29's part and does not raise a valid issue for hearing in accordance with the pleading requirements set forth in the applicable NRC regulations. Accordingly, DLC respectfully requests that the Commission deny Local 29's Petition to Intervene.

II. LOCAL 29 LACKS STANDING TO INTERVENE

To intervene as of right in an NRC licensing proceeding, a petitioner must demonstrate that its interest may be affected by the proceeding, *i.e.*, the petitioner must demonstrate standing.^{3/} North Atlantic Energy Service Corporation (Seabrook Station, Unit 1) CLI-99-06, 49 NRC ___, (slip op. at 7 (March 5, 1999)). To establish standing, a petitioner must identify an interest in the proceeding by alleging a concrete and particularized injury that: (1) is fairly traceable to and may be affected by the challenged action, (2) is likely to be redressed by a favorable decision,

^{2/} "Petition to Intervene of Local 29, International Brotherhood of Electrical Workers," dated June 3, 1999 (hereinafter Local 29 Pet.). NRC's "Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendments, and Opportunity for a Hearing," in the above-referenced dockets was published in the Federal Register on June 14, 1999 (64 Fed. Reg. 31,880).

^{3/} See also 10 C.F.R. § 2.1306(a) (intervention limited to "[a]ny person whose interest may be affected by the Commission's action on the application."); Streamlined Hearing Process for NRC Approval of License Transfers, 63 Fed. Reg. 66,721, 66,723-24 (1998) ("[t]he new Subpart M does not alter the Commission's usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding.").

and (3) arguably lies within the zone of interests protected by the governing statutes. Id. The petitioner must also specify the facts pertaining to that interest. Id. Local 29's petition must be denied for lack of standing because the petition alleges injuries that are: (1) outside of the zone of interests protected by the relevant statute -- the Atomic Energy Act of 1954, as amended (AEA), and (2) speculative and could not be redressed by a favorable decision.

Local 29 lacks standing because it seeks to protect an interest that is not among the interests protected under the AEA. Local 29 is clearly seeking to protect the economic interests of its members. Staffing decisions made by FENOC that could hypothetically be adverse to the interests of Local 29's members do not confer standing upon Local 29. Merely because one may be injured by a particular agency action does not necessarily mean one is within the zone of interests to be protected. Quivira Mining Company (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 11 (1998) (citing Air Courier Conference of America v. American Postal Workers Union, 498 U.S. 517, 524 (1991)). The staffing decisions that will be made by FENOC with respect to the union employees at BVPS are outside the zone of interests protected by the AEA. The AEA focuses on the protection of the public from radiological harm and not from injury to economic interests. Quivira Mining, CLI-98-6, 48 NRC at 5, see also Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 375 (1992) (citing Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980)).

Although Local 29 seeks to establish a link between staffing levels at BVPS and nuclear safety, this link is too tenuous to confer standing. The vigorous assertions of an association that its members' interests -- albeit financial -- would promote the aims of the relevant statute will be

denied standing where those financial interests are marginally related to the statute's goals. Id. at 13 (citing Hazardous Waste Treatment Council v. EPA, 861 F.2d 277, 281 (D.C. Cir. 1988), cert. denied, 490 U.S. 1106 (1989)). Thus, Local 29 has failed to meet the zone of interests test and its petition to intervene should be denied on this basis.

Local 29 also lacks standing because its allegation that the proposed license transfer will lead to offsite radiological consequences is both speculative and unsubstantiated. Local 29 asserts that its members, some of whom live near BVPS, would be harmed from the unsafe operation of BVPS allegedly resulting from: (1) FENOC operating the plant without a sufficient number of experienced, qualified personnel if the license transfer were approved prior to the staffing decisions made by FENOC; and (2) low employee morale in the period between signing and closing of the DLC and FirstEnergy agreement related to the transfer of BVPS. Local 29 Pet. at 3-4. This allegation raises no credible claim of harm resulting from the proposed license transfer. The organizational structure, personnel qualifications, and staffing requirements for a nuclear power plant are set forth in NRC regulations and the Technical Specifications and Updated Final Safety Analysis Report (UFSAR) for that plant. Local 29 provides no facts to support an assertion that BVPS would be operated in violation of these requirements.

A petitioner cannot seek to obtain standing simply by alleging without substantiation that changes will lead to offsite radiological consequences. Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, ___ (1999). Instead, a petitioner is obligated to provide technical analyses and expert opinion or other information supporting its contention. Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 284, vacated in part and remanded on other grounds, CLI-95-10, 42

NRC 1, aff'd in part, CLI-95-12, 42 NRC 111 (1995). Because its allegations are speculative and unsubstantiated, Local 29 does not have standing to intervene in this proceeding.

**III. LOCAL 29 HAS FAILED TO RAISE
A VALID ISSUE IN ACCORDANCE WITH THE
PLEADING REQUIREMENTS SET FORTH
IN NRC's REGULATIONS**

To intervene as of right in a Commission licensing proceeding, a petitioner must not only demonstrate standing but must also raise at least one admissible contention or issue. Seabrook, CLI-99-06, 49 NRC at ____, slip op. at 7-8. To establish an admissible issue in a license transfer proceeding under 10 C.F.R. § 2.1306(b)(2), the petitioner must set forth the issues sought to be raised and:

- (1) demonstrate that those issues fall within the scope of the proceeding;
- (2) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application;
- (3) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely; and
- (4) show that a genuine dispute exists with the applicant on a material issue of law.

See also, Seabrook, CLI-99-06, 49 NRC at ____, slip op. at 7-8. Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348-49 (1998). As shown below, Local 29 does not meet these criteria with respect to any of the issues raised in its petition.

A. Local 29's Issues Are Not Supported by Sufficient Factual Bases

Local 29's petition should be dismissed because the issues it raises lack the specificity and support required under 10 C.F.R. § 2.1306(b)(2)(iii). Local 29 asserts that: (1) the proposed license transfer fails to provide assurances that the plant will be operated safely and staffed with experienced, qualified personnel, and (2) safe plant operations may be adversely affected by low employee morale in the period between the signing of the agreement and its closing. Local 29 Pet. at 3-4. The absence of specificity and support is, without more, a sufficient ground for rejecting the contentions. Calvert Cliffs, CLI-98-25, 48 NRC at 349, Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC ____ (1999).

Local 29 asserts that the license transfer application is deficient, but provides no basis in fact or expert opinion to support its claims. A petitioner may not rely upon a broad, bald conclusory allegation. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998). NRC regulations, including the recently-issued Subpart M, do not permit the filing of vague, unparticularized contentions unsupported by affidavit, expert, or documentary support. Seabrook, CLI-99-06, slip op. at 14. Furthermore, Commission practice does not permit notice pleading with details to be filled in later. Id. Instead, the Commission requires a petitioner to come forward at the outset with sufficiently detailed grievances. Id.

In addition, by asserting that the safe operation of the plant may be jeopardized by the license transfer and low employee morale, Local 29 is essentially alleging that FENOC would operate the plant in a manner contrary to NRC regulations and the BVPS technical specifications. To be admissible, a contention founded on the premise that a licensee will not follow regulatory requirements must contain some particularized demonstration that there is a

reasonable basis to believe that the licensee would act contrary to the regulations. General Public Utilities Nuclear Corporation (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 146 (1996). Local 29 has made no particularized demonstration that FENOC would not comply with the plant staffing requirements established by NRC regulations, the BVPS Technical Specifications, and the BVPS UFSAR. Therefore, Local 29's petition to intervene must be denied on this basis.

B. Local 29's Issues Are Not Relevant and Material and Constitute an Impermissible Attack on NRC Regulations

Local 29's petition must also be dismissed because 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 C.F.R. § 2.1306(b)(2)(ii). To the extent that Local 29's petition advocates staffing levels which go beyond those set forth in the existing NRC requirements for BVPS, the petition must be dismissed as an impermissible attack on generic Commission regulations.

Local 29 urges the Commission to stay the proceedings pending FENOC's staffing decisions so that the Commission may evaluate the safety of BVPS based on FENOC's actual staffing commitments, including the experience level of plant operators. Local 29 Pet. at 4. NRC regulations require license applicants to set forth the plant personnel qualification requirements in the UFSAR. 10 C.F.R. § 50.34(b)(6)(i). NRC regulations also establish specific operator and senior operator staffing requirements. 10 C.F.R. § 50.54(m). A plant's Technical Specifications may also establish other staffing requirements. DLC currently meets these

requirements and FENOC has committed to meet all 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.

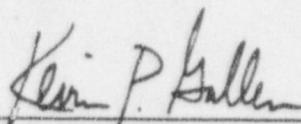
To the extent that Local 29 is advocating that the Commission impose stricter requirements on FENOC in connection with the proposed license transfer than those imposed by the Commission's own regulations, it constitutes a collateral attack on these regulations. However, petitioners are not permitted to raise issues that collaterally attack the Commission's regulations in licensing proceedings. Seabrook CLI-99-06, 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, LBP-98-7, 47 NRC at 179 (1998).

Because the current and planned BVPS staffing requirements comply with the regulations and the licensing basis for BVPS, Local 29's petition must be denied. The issues raised in Local 29's petition either are not relevant and material to the findings the Commission must make to consent to the proposed transfer or constitute an impermissible attack on the Commission's regulations.

CONCLUSION

For all the foregoing reasons, DLC respectfully requests that the Commission deny Local 29's Petition to Intervene since Local 29 lacks standing and has failed to raise a valid issue for consideration in this license transfer proceeding in accordance with the pleading requirements set forth in 10 C.F.R. § 2.1306(b)(2).

Respectfully submitted,


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CERTIFICATE OF SERVICE

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I hereby certify that copies of the Answer of Duquesne Light Company to Petition to Intervene 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 16th day of June, 1999.

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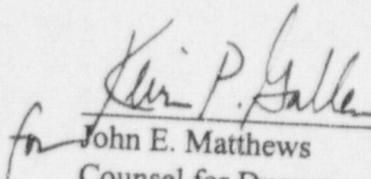
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