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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'99 JUN 28 P2:14

In the Matter of :
FirstEnergy Nuclear Operating Company, : Docket Nos.
Pennsylvania Power Company, and : 50-334 & 50-412 - LI
Duquesne Light Company :
(Beaver Valley Power Station, Units 1 & 2) :

OFFICE OF THE
GENERAL COUNSEL
ADJUDICATIONS STAFF

REPLY OF
LOCAL 29, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

Pursuant to Section 2.1307 of the regulations of the Nuclear Regulatory Commission ("Commission"), 10 CFR § 2.1307, Local 29, International Brotherhood of Electrical Workers ("Local 29"), files this Reply to the Answers that were filed by Duquesne Light Company ("Duquesne") and FirstEnergy Nuclear Operating Company ("FENOC") on June 16, 1999.

Introduction

In their Answers, Duquesne and FENOC oppose Local 29's Petition to Intervene. They assert that Local 29 lacks standing to participate in this license-transfer proceeding and that Local 29 has not raised issues in sufficient detail to be considered by the Commission.

Duquesne and FENOC are wrong on both counts. Local 29, as the authorized representative of most of the employees at Beaver Valley units 1 and 2, does have standing to participate in this case. Further, Local 29's statement of the issue is sufficiently detailed to enable the Commission and the parties to know what is at issue in

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this case. Therefore, as Local 29 will demonstrate below, its petition to intervene should be granted.

However, if the Commission disagrees and finds that Local 29 cannot intervene as of right, then the Commission should use its discretion and grant permissive intervention to Local 29.

Before discussing the specific flaws in the arguments of FENOC and Duquesne, it is important to recognize what Local 29 is really seeking in this case. Contrary to a number of assertions made by the Applicants, Local 29 is not seeking to change the operating conditions at Beaver Valley, is not trying to mandate particular staffing levels, and is not seeking to delay or impede the transfer of Beaver Valley from Duquesne to FENOC.

Instead, Local 29 is seeking to ensure that Beaver Valley will be staffed in a manner that ensures the continued safe operations of the facility. The application filed by Duquesne and FENOC contains only unsupported, conclusory statements about the staffing of the plant. The agreement between Duquesne and FENOC does not contain any definitive statement about staffing levels at the plant. In other words, the application has been filed with the Commission in such a way that the Commission has no idea how the plant will be staffed if the transfer is approved. The purpose of Local 29's intervention is to ensure that the Commission assures itself that the plant will be properly staffed and safely operated before it approves the transfer.

It bears repeating that Local 29 has not requested a hearing, is not opposing the transfer, and is not seeking to delay Commission action on the application. It is only

seeking to ensure that the Commission has full and complete information about the proposed operating conditions at the plant before it takes action on the application.

Local 29 Has Standing to Intervene in this Case

Duquesne and FENOC have accurately stated the general law of standing, but they have misapplied that law and have ignored Commission precedent that is directly applicable to this case.

Both Duquesne and FENOC assert that the employees who work at a nuclear power plant are "outside the 'zone of interest' of the Atomic Energy Act." FENOC Answer at 3; see Duquesne Answer at 4. On its face, this statement is not credible.

The Atomic Energy Act is concerned with protecting the public from radiation hazards. The Act and the Commission recognize that those who are most at risk from radiation exposure are the people who work at licensed facilities. The Act and the Commission's regulations contain provisions that deal specifically with the rights of employees of licensees to protection from the actions (or failures to act) of the licensees. See 42 U.S.C. § 5851, 10 C.F.R. § 50.7, 10 C.F.R. Part 19; see also *Houston Light and Power Co. (South Texas Project Units 1 and 2)* 40 N.F.C. 377 (1994) (finding that the licensee engaged in improper conduct as to some of its employees and recognizing the importance of the relationship between the licensee and its employees).

Recognizing the facial absurdity of their argument, Duquesne and FENOC then attempt to explain that Local 29 does not have standing because it is seeking to represent the economic interest of its members, as opposed to the interest of those members in the safe operation of the Beaver Valley station. FENOC Answer at 9; Duquesne Answer at 4.

First, this is not correct. Local 29 is concerned about the potential that the new owner (FENOC) might make staffing decisions that are inconsistent with the safe operation of the facility. Local 29 has not advocated any specific staffing level or any particular level of monetary or other benefits for its members before this Commission. Rather, Local 29 has raised the concern that, as of this date, FENOC does not have a plan for staffing the plant and has only made unsupported, conclusory statements to the Commission about its staffing plans. The sole purpose of Local 29's petition to intervene is to ensure that the plant is staffed at an appropriate level of properly trained personnel so that the plant operates in a safe and reliable manner.

Second, FENOC and Duquesne have ignored Commission precedent that specifically gives labor unions the right to participate in proceedings that could have a direct effect on their members. In *Consumers Power Co. (Palisades Nuclear Power Facility)*, 15 N.R.C. 493 (1982), *vacated as moot*, 16 N.R.C. 50 (1982)¹, the Atomic Safety and Licensing Appeal Board recognized that a labor union should be permitted to protect the economic interests of its members when that interest is threatened by an action of the Commission. Specifically, that case involved a change in the overtime restrictions at a nuclear power plant. The union did not allege any safety-related issues associated with the proposed change; rather, it alleged that its members would suffer economic harm (being able to work fewer overtime hours). The ASLAB held that it was appropriate for the union to participate in the proceeding since it alleged that the overtime restriction (the economic harm) was not needed in order to ensure the safe operation of the facility.

¹ The order was vacated as moot because the union and the Commission Staff reached a settlement. 16 N.R.C. 50.

In this case, as noted above, Local 29 is doing more than seeking to protect its members' economic interests; it is also seeking to protect their interest in ensuring the safe operation of the facility. There should be little question, therefore, that Local 29 has an interest in the outcome of this case.

In evaluating the standing of an intervenor, it is also important to determine whether the intervenor's rights could be adversely affected by the outcome of the case. This also should be self-evident in this case. The transfer of Beaver Valley should be approved only if the Commission can assure itself that the plant will be operated in a safe manner. If the plant is not appropriately staffed and an unsafe condition results, the people who work at the plant will be those who are most directly placed at risk.

Local 29's Petition is Sufficiently Specific to Identify the Issues

Duquesne and FENOC also assert that Local 29 has not provided specific enough information in its petition to intervene. This is not correct.

Local 29 acknowledges that its petition does not contain detailed allegations of harm. Rather, the petition contains information that is comparable in quality, specificity, and form to that which the Applicants provided in their application. As Local 29 stated in its petition, the application is replete with unsupported, conclusory statements about the effect of the transfer on operations at the plant. Given the complete lack of information in the application, Local 29 did its best to identify its concern (the lack of information about staffing levels) and the relationship of that concern to safety (that inadequate staffing levels could lead to unsafe plant operations).

For example, Duquesne criticizes Local 29 because it "provides no facts to support an assertion that BVPS would be operated in violation of these [USFAR] requirements."

Duquesne Answer at 5. But exactly the same statement can be made about the application: the Applicants have provided no facts to support an assertion that Beaver Valley will be operated in accordance with these requirements. In other words, given the lack of information in the application, Local 29 did the best that it could to identify and raise the issue of concern. If the application had included a specific plan for staffing the facility, then Local 29 could have reviewed that plan and respond to it, if necessary.

Indeed, Local 29 would like nothing better than to be able to review a specific plan for staffing the plant. If such a plan is made available, Local 29 will review it and indicate to the Commission whether it raises any concerns about the safe operation of Beaver Valley. However, until such a plan is made available, it is not possible for Local 29 to provide a more specific statement of issues to the Commission.

In short, while Local 29's petition is not fact-laden, it is specific enough to put the Commission and the parties on notice about what is at issue in this case. The issue is straight forward. If the applicants provide a specific plan for staffing the plant, then Local 29 will respond with a specific statement that either raises issues or indicates that no such issues are apparent.

If the Commission Rules Against Local 29, the Union Should Be Granted Permissive Intervention

If the Commission rules against Local 29 and finds that Local 29 does not have standing to intervene as of right in this case, then the Commission should use its discretion to grant Local 29 permissive intervention in this case. The Commission has the authority to grant interested parties the right to participate, even if they do not meet the technical requirements for intervention as of right.

In *Consumers Power Co.*, *supra*, the ASLAB noted and relied on the Commission's decision in *Portland General Electric Co. (Pebble Springs Nuclear Plant Units 1 and 2)*, 4 N.R.C. 610 (1976), that "our regulatory responsibilities can best be carried out by allowing intervention as a matter of discretion to some petitioners who do not meet judicial standing tests." Accord *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, 37 N.R.C. 355 (1993); *Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation)*, 47 N.R.C. 142 (1998); *Yankee Atomic Electric Co. (Yankee Nuclear Power Station)*, 47 N.R.C. 343 (1998).

In determining whether permissive intervention should be granted, the cases cited above (among others) establish six standards: three that favor intervention and three that weigh against intervention. Specifically, the standards favoring intervention are (1) the extent to which the intervenor can assist in developing a record; (2) the nature of the intervenor's property, financial, or other interest; and (3) the potential effect of an order on the intervenor.

Local 29 meets all three of these factors. Local 29 and its members can assist the Commission in determining whether proposed staffing levels (once those levels are disclosed by the applicants) are consistent with the safe operation of Beaver Valley. Local 29 has a strong interest in these issues, as discussed at length above. Finally, as also discussed above, an adverse order from the Commission (that is, an order that does not ensure adequate staffing levels at the plant) would have a seriously adverse effect on Local 29 and its members.

The three factors that weigh against intervention are as follows: (1) whether other means are available for the intervenor to protect its interests; (2) whether intervenor's

interests will be adequately represented by other parties; and (3) whether intervenor's participation will burden or delay the case.

Local 29's participation in this case would not raise any of these concerns. Local 29 does not have other means to ensure that Beaver Valley is appropriately staffed to ensure the safe operations of the plant. No other party is representing the interests of the people who work at Beaver Valley. Finally, Local 29 has not requested a hearing or any other proceedings that would lead to delay or otherwise prejudice the applicants.

Consequently, even if the Commission rules against Local 29's petition to intervene as of right, the Commission should use its discretion to grant Local 29 permissive intervention.

WHEREFORE, Local 29, IBEW, requests the Commission to deny the Answers of Duquesne Light Company and FirstEnergy Nuclear Operating Company and grant Local 29's Petition to Intervene as of right. In the alternative, if the Commission rules against Local 29, then the Commission should use its discretion to grant Local 29 permissive intervention in this proceeding.

Respectfully submitted,



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Dated: June 23, 1999

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RULEMAKING AND
ADJUDICATION STAFF

CERTIFICATE OF SERVICE

In accordance with the requirements of 10 CFR § 2.1313, I hereby certify that I have this day served a copy of the Reply of Local 29, International Brotherhood of Electrical Workers, by electronic mail and first class mail on the following:

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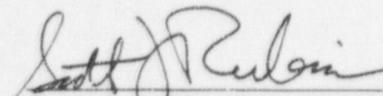
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