

DOCKETED 9/24/99

COMMISSIONERS:

SERVED 9/24/99

Greta Joy Dicus, Chairman
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
DUQUESNE LIGHT COMPANY, AND)
)
FIRSTENERGY NUCLEAR OPERATING CO.)
)
PENNSYLVANIA POWER CO.)
)
(Beaver Valley Power Station, Units 1 and 2))
)
_____)

Docket Nos. 50-334-LT & 50-412-LT

CLI-99-25

MEMORANDUM AND ORDER

The Commission had closed this proceeding on July 23, 1999. CLI-99-23, 50 NRC 21. However, on September 15, 1999, Local 29 of the International Brotherhood of Electrical Workers ("Local 29") filed with the Commission a pleading styled "Petition to Waive Time Limits in 10 C.F.R. § 2.1305 and Supplemental Comments" in this license transfer proceeding involving the Beaver Valley Power Station. Duquesne Light Company, FirstEnergy Nuclear Operating Company and Pennsylvania Power Company (collectively "FirstEnergy") filed Answers opposing Local 29's petition and comments. The NRC staff, as is its usual practice in license transfer proceedings, has chosen not to participate as a party in this case. For the reasons set forth below, we waive the time limit set forth in section 2.1305 and refer the comments to the NRC staff.

BACKGROUND

This proceeding involves a proposed transfer of interests in the Beaver Valley Power Station from Duquesne Light Company to FirstEnergy. Application, dated May 5, 1999. On June 3rd, Local 29 sought to intervene and offered comments addressing FirstEnergy's failure to indicate how it intended to staff the Beaver Valley facility. In CLI-99-23, slip op. at 2, the Commission denied the Union's petition to intervene on the following ground:

The Commission's newly promulgated rules for license transfer set out two possible avenues to address issues that may arise from license transfer applications: written comments or hearings. In this instance, Local 29 has filed a "petition to intervene" but has specifically declined to request 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 10 C.F.R. § 2.1305.... The Commission will consider and, if appropriate, respond to Local 29's comments in accordance with § 2.1305. We are referring the comment to the NRC staff for its consideration as it reviews the license transfer application.

On September 15th, Local 29 filed supplemental comments out-of-time, explaining that, until September 2nd, it had lacked access to the information necessary to make specific arguments regarding the safety implications of FirstEnergy's proposed staffing levels for the Beaver Valley facility. Now that Local 29 has obtained this information, it wishes to file comments pursuant to 10 C.F.R. § 2.1305(b), despite that regulation's provision that comments must be submitted within thirty days after the Commission issues a public notice of its receipt of the application. In sum, Local 29 argues that FirstEnergy's plan to eliminate the jobs of 104 members of the Local will adversely affect plant safety. See Petition at 3-7. Local 29 seeks three forms of relief: (1) waiver of the time limit for submitting its supplemental comments, (2) a requirement that FirstEnergy demonstrate its ability to operate Beaver Valley safely despite the 104 layoffs, and (3) such hearings or other proceedings as may be necessary to ensure the safe operation of the Beaver Valley facility if the application is granted. See Petition at 7.

DISCUSSION

We construe Local 29's instant requests for relief to fall within Subpart M's "comments" option rather than its "adjudicatory hearing" option. Local 29 has

not attempted in its petition to meet the regulatory standards for intervention petitions and adjudicatory hearing requests set forth in 10 C.F.R. § 2.1306. Indeed, it does not even cite those standards. Moreover, it repeatedly refers to its wish to submit supplemental "comments," and only once even uses the word "hearing" (in the final sentence of its petition). Further, the "hearing request" in that last sentence does not seek an adjudicatory hearing per se but rather is phrased far more generally -- asking the Commission "to hold such hearings or other proceedings as may be necessary to ensure the safe operation of Beaver Valley ... if the application is granted." Petition at 7.

We therefore will treat Local 29's request in an administrative ("comment") rather than an adjudicatory ("hearing") context. Regarding Local 29's first and second requests for relief, we grant Local 29 a waiver of the time limits for filing comments, in view of Local 29's claim of newly available information, and we refer Local 29's comments to the staff with instructions to consider, expeditiously, whether those comments call into question FirstEnergy's ability to operate the Beaver Valley plant safely. As to Local 29's third request for relief (seeking "such hearing or other proceedings as may be necessary"), we consider the NRC staff's ongoing review to be sufficient, in Local 29's words, "to ensure the safe operation of Beaver Valley." Local 29's petition provides no justification for conducting a parallel adjudication on issues that the NRC staff will already be considering. See *Cleveland Elec. Illum. Co. (Perry Nuclear Power Plant, Units 1 and 2)*, CLI-86-7, 23 NRC 233, 236 (1986), *aff'd sub nom. Ohio v. NRC*, 814 F.2d 258 (6th Cir. 1987).

IT IS SO ORDERED.

For the Commission⁽¹⁾
[Original Signed by Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of September, 1999.

1. Commissioner Diaz was not available for the affirmation of this Order. If he had been present, he would have approved the Order.