UNITED STATES OF AMERICA
RAS 12032 NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

DOCKETED 07/26/06
SERVED 07/26/06

Dale E. Klein, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

In the Matter of		
	Docket Nos.	50-250-LT
FLORIDA POWER & LIGHT CO.		50-251-LT
FPL ENERGY SEABROOK, LLC		50-335-LT
FPL ENERGY DUANE ARNOLD, LLC		50-389-LT
CONSTELLATION ENERGY GROUP, INC.		50-443-LT
		50-331-LT
(Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 & 2;		
Calvert Cliffs Nuclear Power Plant, ISFSI;		50-317-LT-2
Nine Mile Point Nuclear Station, Unit Nos. 1 & 2;		50-318-LT-2
R.E. Ginna Nuclear Power Plant		72-8-LT-2
Turkey Point Nuclear Power Plant, Unit Nos. 3 & 4;		50-220-LT-3
St. Lucie Nuclear Plant, Units 1 & 2;		50-410-LT-3
Seabrook Station;		50-244-LT-2
Duane Arnold Energy Center)		

CLI-06-21

MEMORANDUM AND ORDER

This proceeding stems from the Applications of FPL Group, Inc., and the Constellation Energy Group, Inc. (collectively, the "parent corporations" of various NRC licensees) for approval of the indirect transfers of the operating licenses for the captioned Turkey Point, St. Lucie, Seabrook and Duane Arnold facilities. The parent corporations seek approval of these indirect license transfers as necessary to those corporations' pending merger. The parent corporations also request a "threshold determination" that no indirect transfer of control over the captioned Calvert Cliffs, Nine Mile Point and R.E. Ginna facilities requires Commission approval pursuant to 10 C.F.R. §§ 50.80 and 72.50 in connection with the merger.

On June 6, 2006, the International Brotherhood of Electrical Workers, Local 97 ("the Union") petitioned to intervene and sought a hearing to challenge the Applications, including the request for a "threshold determination."[1] We deny the Union's hearing and intervention requests.

BACKGROUND

The Union represents employees at the Nine Mile Point facility – employees whose "employment and financial well-being"[2] will, according to the Union, be adversely affected by the consummation of the proposed merger. The Union asserts that Nine Mile Point's management intends to reduce the facility's already-insufficient staffing level by 22 percent (more than 250 employees). According to the Union, this reduction in force would adversely affect the operation of Nine Mile Point in general and the facility's Emergency Plan in particular.

The Union directs our attention to two specific changes which it believes to have safety implications. First, the Union claims that Constellation intends to abolish all eight existing "Chief Firefighter" positions. The occupants of these positions are trained not only as firefighters but also as emergency medical technicians. According to the Union, Constellation plans to replace them with "auxiliary operators" who have minimal firefighting and first aid training.[3] Second, the Union claims that Constellation intends to run less frequently its preventive maintenance, corrective maintenance, elective maintenance, and surveillance testing programs, or move them to a "run to fail" status.[4]

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[1] The Union's pleadings are styled "Petition to File Motion to Intervene and Protest Out-of-Time" ("Petition") and "Motion for Hearing and Right to Intervene and Protest" ("Motion").

[2] Motion at 3.

[3] *Id.* at 4.

[4] *Id.* at 5.

DISCUSSION

As the Union acknowledges, its filings are untimely. Our notices of opportunity for hearing with regard to the Applications specified that potential parties must file their petitions to intervene no later than March 14, 2006.[5] The Union's June 6th filings are therefore nearly three months late. As such, they must satisfy not only our requirements that intervenors demonstrate standing (10 C.F.R. § 2.309(d)) and submit at least one admissible contention (10 C.F.R. § 2.309(f)(1)), but also our stringent requirements for untimely filings (10 C.F.R. § 2.309(c)) and late-filed contentions (10 C.F.R. § 2.309(f)(2)).

A. Tardiness of Pleadings

The Union seeks to excuse the tardiness of its filing by explaining that it initially believed the Federal Energy Regulatory Commission was the appropriate forum for its arguments, and only belatedly realized that it could also present various operating and safety arguments before the NRC. We find this explanation insufficient. As we stated in another license transfer decision, "[w]e cannot agree that [the petitioner's] failure to read carefully the governing procedural regulations constitutes good cause for accepting its late-filed petition."[6]

In addition, the Union's petition makes little effort to meet our requirements governing late-filed contentions. The Union does not address any of the factors in section 2.309(f)(2), which provides for consideration of late-filed new contentions "only ... upon a showing" that::

(i) [t]he information upon which the . . . new contention is based was not previously available;
(ii) [t]he information . . . is materially different than information previously available; and
(iii) [t]he . . . new contention has been submitted in a timely fashion based on the availability of the subsequent information.

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[5] 71 Fed. Reg. 9168-9176 (Feb. 22, 2006).

[6] *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 223 (1999).

Likewise, the Union does not address two of the factors specified in section 2.309(c)(1) regarding untimely filings:

> (v) The availability of other means whereby the . . . petitioner's interest will be protected; [and]
>
> * * * * * *
>
> (vii) The extent to which the . . . petitioner's participation will broaden the issues or delay the proceeding.

Section 2.309(c)(2) clearly provides that a petitioner "shall address" all eight factors set forth in section 2.309(c)(1).

The Union's failure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting its intervention and hearing requests.

B. Failure to Submit an Admissible Contention

Section 2.309(f)(1) provides that a petitioner "must set forth with particularity the contentions sought to be raised." The Union has not done so. Although we are disinclined to "step into the middle of a labor dispute"[7] or "involve [ourselves] in the personnel decisions of licensees,"[8] we have recognized that there may be cases where employment-related contentions which are "closely tied to specific health-and-safety concerns or to potential violations of NRC rules[] can be admitted for a hearing."[9] But in this case, the Union's health-and-safety assertions are much too general to warrant a hearing. It is not enough under our contention-pleading rules -- whose "hallmark" is "specificity"[10] -- simply to say that a merger will result in personnel reductions that will adversely affect safety. General assertions, unsupported

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[7] *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point Unit 3), CLI-00-22, 52 NRC 266, 314 (2000).

[8] *Id.* at 316.

[9] *Id.* at 315.

[10] *Northeast Nuclear Energy Co. and Consolidated Edison Co. of New York, Inc.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 NRC 129, 132 (2000).

by specific facts or expert opinion, that personnel reductions may adversely affect health and safety are inadmissible.[11] The Union provided no such factual or expert support, by affidavit or otherwise.

C. Lack of Standing

To establish standing, the Union must show (among other things) that its potential injury is fairly traceable to a grant of the Applications (*i.e.*, to the approval of the indirect license transfers). The Union describes no causal nexus at all between the asserted potential injury to its members' "employment and financial well-being" and the indirect transfer of licenses for the Turkey Point, St. Lucie, Seabrook, Duane Arnold, Calvert Cliffs, and R.E. Ginna facilities. Indeed, the Union does not even claim to represent employees at those facilities. We therefore find that the Union lacks standing to intervene insofar as the Applications concern those six facilities.

As for the remaining facility, Nine Mile Point, the Union does assert a causal link between the proposed merger and the personnel decisions. Yet the Union provides no factual support (*i.e.*, affidavits) for this proposition, instead resting its assertions on speculation. This shortcoming is particularly damaging given the Union's acknowledgment that the personnel actions of which it complains were "planned in late 2004 and beg[u]n in earnest in January 2005"[12] – at least a year before the parent corporations filed their Applications. For these reasons, we find that the Union has failed to establish a link between the Nine Mile Point license transfers and safety concerns sufficient to show standing to challenge the indirect transfers.

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[11] *FitzPatrick*, CLI-00-22, 52 NRC at 315.

[12] Motion at 4.

CONCLUSION

We *deny* the Union's intervention and hearing requests.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of July, 2006.