

April 1, 2004

EA-03-208

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
P. O. Box 97, A210
Perry, OH 44081

SUBJECT: NOTICE OF VIOLATION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-031]

Dear Mr. Kanda:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into an apparent violation of the Technical Specification limit on working hours on March 12 and March 13, 2001, at the FirstEnergy Nuclear Operating Company's (FENOC) Perry Nuclear Power Plant. A summary of the OI investigation was provided to you on December 19, 2003, and a predecisional enforcement conference was held with you on March 2, 2004.

Based on information developed during the OI investigation, information contained in letters from FENOC on February 25, 2004, and March 22, 2004, and the information you provided during the predecisional enforcement conference, the NRC has concluded that a violation of NRC requirements occurred. In summary, on March 9, 2001, during Refueling Outage RF-08, at least one contract technician, responsible for testing motor operated valves (MOVs) at the Perry Nuclear Power Plant deliberately devised a plan of "creative timekeeping," so that three technicians worked on a regularly scheduled day off and charged that time to a day during the following week when they had fewer hours scheduled. One technician mentioned this plan during a regular shift turnover meeting that was attended by at least three FENOC supervisors associated with the MOV testing program. A comment about "creative timekeeping," was attributed to at least one technician. Another employee reminded those attending the turnover meeting that regardless of the number of hours the technicians planned to work, plant procedures limited them to a maximum number of hours in a given period of time. Following this reminder, none of the supervisors asked the technician about his comment regarding "creative timekeeping," sought preapproval of the overtime as required by Technical Specification, or otherwise followed-up on the issue. As a result, two technicians worked in excess of 72 hours in a 7-day period without a preapproved overtime deviation. One technician worked 12 hours per day for 9 consecutive days and a second technician worked 12 hours per day for 10 consecutive days. The time card for each technician was prepared in a manner that indicated the technicians did not work in excess of 72 hours in a 7-day period. One FENOC supervisor refused to sign the time cards, apparently believing the cards contained inaccurate or incorrect information; however, that supervisor failed to take action to identify, correct, or inform management of this information.

The FENOC supervisors were all aware that a deviation from the overtime guidelines needed to be submitted and approved by plant management before the overtime could be worked. By failing to stop the technicians' plan to work in excess of the overtime guidelines and by failing to submit a request for prior approval of the overtime, the FENOC supervisors allowed a violation of the Technical Specification limiting overtime to occur. The actions of two of the supervisors are considered willful violations, representing careless disregard of the Technical Specification limiting overtime because they knew that the technicians planned to work in excess of the overtime guidelines. The other supervisor was on a different shift than the technicians and was not in direct control of their work hours. In addition, he said he believed the technician was joking when he made the comment about creative timekeeping. The NRC concluded that his actions did not rise to the level of careless disregard; however, he had an opportunity to prevent the violation of Technical Specifications. The actions of at least one technician in devising the plan to exceed the overtime guidelines is considered to be a deliberate violation of the Technical Specification requirement. Because the violation involved willfulness, it has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$60,000 is considered for a Severity Level III violation. Because this was a willful violation, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The violation was identified to FENOC by another FENOC employee; therefore, credit is warranted for the *Identification* civil penalty adjustment factor. While corrective actions at the time the violation was identified to FENOC were minimal (e.g., corrective action report did not address the employee integrity aspect of the violation and only one of the three supervisors responsible for the violation was counseled) broader corrective actions were taken following a subsequent FENOC investigation of the violation. Corrective actions consisted of, but were not limited to: (1) sending a letter to all plant personnel on overtime management, including responsibility for compliance with work hour limits; (2) providing training to supervisors and staff on compliance, completeness and accuracy, including overtime deviations and time cards; (3) incorporating training on compliance, completeness and accuracy into your plant access training; (4) providing more detailed guidance on individual and supervisory responsibility for control of work hours; and (5) counseling the involved supervisors. On balance, credit was warranted for the *Corrective Action* civil penalty adjustment factor.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket No. 50-440
License No. NPF-58

Enclosure: Notice of Violation

cc w/encl: G. Leidich, President - FENOC
K. Cimorelli, Acting Director,
Maintenance Department
V. Higaki, Manager, Regulatory Affairs
J. Messina, Director, Nuclear
Services Department
T. Lentz, Director, Nuclear
Engineering Department
T. Rausch, Plant Manager,
Nuclear Power Plant Department
M. O'Reilly, Attorney, First Energy
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

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DATE	3/31/04		03/30/04		3/31/04		4/1/04		4/1/04		4/1/04	

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¹ HQ concurrence received 3/30/04 from Frances Ramirez, OE.

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NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant, Unit 1

Docket No. 50-440
License No. NPF-3
EA-03-208

During an NRC investigation concluded on October 6, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

Technical Specification 5.2.2.e for the Perry Nuclear Power Plant requires, in part, that administrative procedures shall be developed and implemented to limit the working hours of unit staff who perform safety related functions (e.g., key maintenance personnel). The procedures shall include guidelines on working hours that ensure adequate staff coverage is maintained without heavy use of overtime. Any deviation from the working hour guidelines shall be authorized in advance by the Plant Manager in accordance with approved administrative procedures and with documentation of the basis for granting the deviation.

Plant Administrative Procedure (PAP) 0224, "Fitness for Duty," Revision 2, February 5, 1999, implements Technical Specification 5.2.2.e.

Section 5.13 of PAP-0224 defines key maintenance personnel as those individuals physically performing or immediately supervising the performance of maintenance, repair, testing, modification, or calibration of safety-related structures, systems or components.

Section 6.14 of PAP-0224 provides, in part, that the Technical Specification overtime guidelines will be followed in the event that substantial amounts of overtime are required during extended periods of shutdown for refueling, major maintenance or major plant modifications. The guidelines state that an individual should not work more than 72 hours in any 7-day period (excluding shift turnovers). Deviations from the overtime guidelines are requested by the immediate supervisor from the Plant Manager, or designee, using the Technical Specification Overtime Deviation Request form (PNPP No. 7699). Section 6.15.2 of PAP-0225 designates the Technical Specification Overtime Deviation Request form (PNPP No. 7699) as a quality assurance record.

Contrary to the above, from March 6 to March 15, 2001, two key maintenance personnel responsible for testing motor operated valves, a safety-related function, failed to follow Technical Specification overtime guidelines. Specifically, during Refueling Outage RF-08, the two individuals each worked in excess of 72 hours in a 7-day period and the immediate supervisors failed to request deviations from the overtime guidelines in advance from the Plant Manager or authorized designee. One individual worked 12 hours per day for 10 consecutive days from March 6 to March 15, 2001, and the other individual worked 12 hours per day for 9 consecutive days from March 7 to March 15, 2001.

This is a Severity Level III violation (Supplement I).

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy Nuclear Operating Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Perry Nuclear Power Plant, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-03-208" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 1st day of April 2004.