

May 15, 2000

EA-99-012

Mr. John K. Wood
Vice President, Nuclear
First Energy Nuclear Operating Company
P.O. Box 97, A200
Perry, OH 44081

Dear Sir:

We have received your April 10, 2000 letter requesting Alternate Dispute Resolution (ADR) as a means of disposing of our differing viewpoints on Enforcement Action (EA) 99-012. A Notice of Violation and Proposed Imposition of Civil Penalty of \$110,000 was issued to First Energy with regard to this action on May 20, 1999. After agreed upon extensions, your February 25, 2000, letter formally responded and denied the violation occurred.

After considering your response, we concluded that the violation did occur and the next step in our enforcement process would normally be to impose the civil penalty by order under the authority provided in 10 CFR 2.205. Following receipt of the order, should you continue to deny the violation, you would be provided the opportunity to request a hearing.

However, before we proceed with that process, we are considering your request to utilize ADR to bring this issue to closure. The NRC has not utilized the ADR process for resolution of enforcement issues since the agency established its ADR Policy in August 1992. As such, we have concluded that Commission consultation is warranted prior to proceeding.

We must point out that the Administrative Dispute Resolution Act identifies several situations where it may not be appropriate for an agency to use ADR. Two of these situations - - where the issues significantly affect persons that are not parties and where a full public record of the proceeding is important and a dispute resolution proceeding cannot provide such a record - - are particularly applicable to this case.

Employment discrimination cases have a high degree of both third party and public interest. As such, employing an ADR process may not be in the best interest of instilling public confidence in the enforcement process.

We intend to give your request full consideration, but consider it appropriate to identify the potential vulnerabilities early in the consideration process. We will notify you of the agency decision as to whether ADR is an appropriate means of resolving our differences in this matter in the near future.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be made available to the public.

Sincerely,

/RA/

R. W. Borchardt, Director
Office of Enforcement

cc: H. Hegrat, Manager, Regulatory Affairs
R. Schrauder, Director, Nuclear
Engineering Department
W. Kanda, General Manager
Nuclear Power Plant Department
N. Bonner, Director, Nuclear
Maintenance Department
H. Bergendahl, Director
Nuclear Services Department
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