

August 23, 2000

EA-00-183

Mr. Robert F. Saunders
President
FirstEnergy Operating Company
76 South Main Street
Akron, OH 44308

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(OFFICE OF INVESTIGATIONS REPORT NO. 3-1999-025)

Dear Mr. Saunders:

This letter refers to an investigation initiated by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) on August 2, 1999, to determine whether a radiation protection supervisor was discriminated against by FirstEnergy Nuclear Operating Company (FENOC) during two training sessions conducted by a FENOC contractor at the Davis-Besse Nuclear Power Plant on July 14, 1999. By way of background, on July 14, 1999, representatives of FENOC and its contractor law firm, Shaw Pittman Potts and Trowbridge, conducted a training session at FENOC's Davis-Besse Nuclear Power Plant concerning the provisions of 10 CFR 50.7, "Employee Protection." The training was held as a result of a prior NRC enforcement action issued to FENOC on May 20, 1999, for a violation of 10 CFR 50.7 at its Perry Nuclear Power Plant involving discrimination against a radiation protection supervisor (EA 99-012). Based on the information developed during the OI investigation, it appears that FENOC may have violated 10 CFR 50.7 on July 14, 1999, when representatives of FENOC and the law firm improperly identified the radiation protection supervisor during a discussion of his previous protected activity while he was employed at the Perry Plant. A copy of the synopsis from the OI report and a summary of the OI report are enclosed.

This apparent violation of 10 CFR 50.7 is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

A closed, transcribed predecisional enforcement conference to discuss this apparent violation has been scheduled for 9:00 a.m. (Central Time) on Friday, October 6, 2000, at the NRC Region III office, 801 Warrenville Road, Lisle, IL. We request that certain representatives of FENOC and its outside law firm attend the conference.

The NRC's Enforcement Policy permits the individual who is the subject of the alleged employment discrimination to participate in the conference. Accordingly, the Radiation Protection Supervisor will be invited to attend the conference. The Radiation Protection Supervisor may participate by observing the conference and if desired, following the presentation by FENOC, the Radiation Protection Supervisor may make a presentation to address his views on why he believes discrimination occurred and on the FENOC presentation. FENOC will then be afforded an opportunity to respond and the NRC may ask some clarifying questions. In no case will the NRC staff permit FENOC or the Radiation Protection Supervisor to cross-examine or question each other.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root cause, significance of the issue, and plans for lasting and effective corrective action. In particular, we expect you to address: (1) FENOC's position on the apparent violation, the basis for this position, and the reasons for the apparent violation; (2) the purpose and intent of using the complainant's name during the training session; and (3) the details and results of any investigation that FENOC may have conducted into this matter. In addition, the conference is an opportunity for FENOC to point out any error in our findings and for you to provide perspectives on: (1) the severity level of the apparent violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.C of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter **with Enclosure 1 only** will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA by Steven Reynolds Acting For/

John A. Grobe, Director
Division of Reactor Safety

Dockets No. 50-346; 50-440
Licenses No. NPF-3; NPF-58

Enclosures:

1. Synopsis of OI Report

EXEMPT FROM PUBLIC DISCLOSURE

2. Summary of OI Report

See Attached Distribution

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¹ No legal objection received from Susan Chidakel, OGC, on 8/10/2000.

² Concurrence received from Terry Reis, OE, on 8/15/2000.

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G. Campbell, Vice President - Nuclear
J. Lash, Plant Manager
J. Freels, Manager, Regulatory Affairs
M. O'Reilly, FirstEnergy
State Liaison Officer, State of Ohio
R. Owen, Ohio Department of Health
A. Schriber, Chairman, Ohio Public
Utilities Commission

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G. Dunn, Manager, Regulatory Affairs
K. Ostrowski, Director, Nuclear
Services Department
T. Rausch, Director, Nuclear
Engineering Department
R. Schrauder, General Manager,
Nuclear Power Plant Department
C. Glazer, State of Ohio
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Enclosure 1

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations, Region III, on August 2, 1999, to determine whether a Radiation Protection Supervisor (RPS) at the Perry Nuclear Power Plant was discriminated against after he was identified as a complainant in a pending NRC enforcement action against FirstEnergy Nuclear Operating Company (FENOC) during two training sessions conducted by a FENOC contractor at the Davis-Besse Nuclear Power Plant on July 14, 1999.

Based upon evidence developed during the investigation, it was concluded that the RPS was discriminated against by the RPS being identified by name and discussing the RPS discrimination complaint during a training session conducted on July 14, 1999. The evidence indicated that the violation was not deliberate.