September 26, 2000

MEMORANDUM TO: R. W. Borchardt, Director
Office of Enforcement

FROM: Terrence Reis, Senior Enforcement Specialist /RA/

SUBJECT: SUMMARY OF PUBLIC MEETING WITH REPRESENTATIVES OF FIRST ENERGY TO DISCUSS THE ENFORCEMENT PROCESS FOLLOWING THE IMPOSITION OF A CIVIL PENALTY BY ORDER IN A DISCRIMINATION CASE

On September 21, 2000 the NRC held a public meeting with representatives of FirstEnergy Co., licensee for the Perry facility, to discuss the process for the resolution of an enforcement action after the NRC has imposed by Order a civil penalty. The meeting was open to public observation.

On May 20, 1999 the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $110,000 based on the NRC's conclusion that a violation of 10 CFR 50.7 had occurred at the Perry facility. Prior to issuance of the enforcement action, FirstEnergy had opted to forgo a predecisional enforcement conference and instead submitted a March 10, 1999 written response contesting the violation.

After being granted an extension to respond to the enforcement action in order to obtain evidence through the Freedom of Information Act, FirstEnergy responded on February 25, 2000 formally denying the violations and stating it was willing to explore alternative resolutions to the differing views on this matter rather than requesting a hearing. On April 12, 2000 FirstEnergy formally requested the use of alternative Dispute Resolution to resolve this matter.

On July 26, 2000 the NRC responded that Alternative Dispute Resolution (ADR) would not be used in this matter because the NRC did not have an established process in place for the use of ADR in the enforcement arena. Additionally, consistent with the ADR Act its use in a case such as this was not appropriate because a full public record of the proceedings was warranted and the outcome affected parties that would not be participants in the process. In this July 26, 2000 transmittal the NRC offered FirstEnergy the opportunity to meet with the staff before a formal request for a hearing was made in order to allow FirstEnergy to better understand the hearing process.

The meeting centered around FirstEnergy and its legal counsel asking the Office of General Counsel procedural issues such as expected duration of proceeding, location of proceedings, the extent to which the proceedings would be public and what provisions there may be to protect personal privacy issues, evidence and evidentiary standards, admissibility, and expert testimony. The questions were generally answered in the context of 10 CFR 2.202 and 2.203. No substantive issues surrounding the case at hand were discussed.

After the meeting between the NRC and FirstEnergy was closed, the NRC took questions from the public. An individual asked if there were provisions in the proceedings to allow parties not engaged in the process to make limited appearance. OGC responded there was nothing to preclude it and that the decision would be made by the appointed Board.

No materials were presented by any of the parties.

FirstEnergy has 30 days from the date of the meeting to request a hearing.

Attachment: Attendees

cc: F. Miraglia, DEDR
J. Dyer, RIII

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ATTACHMENT

PUBLIC MEETING - FIRST ENERGY/NRC

EA 99-012 - PROCESS FOR RESOLUTION OF ENFORCEMENT ACTION

NAME	ORGANIZATION
R. W. Borchardt	NRC-OE
Terry Reis	NRC-OE
Dennis Dambly	NRC-OGC
Roy Lessy	Akin, Gump, Strauss et al for First Energy
John Wood	FENOC
Howard Bergendahl	FirstEnergy Nuclear Oper. Co.
Todd Henderson	FENOC - Perry
Bill Wallack	McGraw - Hill
Todd Schneider	FENOC Communications
Victor Dricks	NRC/OPA
David Lochbaum	Union of Concerned Scientists
Susan Yun	Winston & Strawn
G. Charnoff	Shaw Pittman
Donald B. Livingston	Akin, Gump, Strauss, Hauer & Feld - First Energy