

RAS 2356

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 11/07/00

SERVED 11/07/00

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Ann Marshall Young

In the Matter of

FIRST ENERGY OPERATING COMPANY
(FENOC)

(Perry Nuclear Power Plant, Unit 1;
Operating License No. NPF-58)

Docket No. 50-440-CivP

ASLBP No. 01-784-01-CivP

EA 99-012

November 7, 2000

MEMORANDUM AND ORDER

(Granting Request for Hearing and Suspending Proceeding Pending Settlement Negotiations)

Pending before this Atomic Safety and Licensing Board is the timely request (in accord with a response date established by the Director, NRC Office of Enforcement), dated October 18, 2000, by First Energy Operating Company (FENOC or Licensee) for a hearing with respect to the Order Imposing Civil Monetary Penalty of \$110,000.00, dated August 3, 2000, 65 Fed. Reg. 49,610-11 (August 14, 2000). The dispute concerns the alleged violation by FENOC of NRC's employee-protection regulations, based upon the asserted discrimination by a management official against an employee for engaging in protected activities (i.e., testifying in a whistleblowing case before the Department of Labor).

Because the Licensee has a right to the hearing that it requests (see 10 C.F.R. § 2.205(c)), its request for a hearing is hereby granted. The parties to the proceeding are the Licensee and the NRC Staff. As specified in the Order Imposing Civil Monetary Penalty, the issues to be considered at the hearing shall be (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of

Civil Penalty, dated May 20, 1999; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained. The Licensing Board is today issuing a Notice of Hearing.

On October 31, 2000, the Licensee and NRC Staff filed a joint motion to suspend further proceedings for 45 days, to afford the parties an opportunity to pursue settlement negotiations. Inasmuch as settlement is an option that the Commission encourages (see 10 C.F.R. §§ 2.203 and 2.205(g)), the Licensing Board hereby grants such request. Further proceedings are hereby suspended until December 18, 2000. By December 1, 2000, the parties are requested to file a report as to the progress of negotiations.

To assist the Licensing Board in its consideration of issues in this proceeding, the NRC Staff is requested to forward to the Licensing Board (and to the Licensee, if it has not already been provided such documents), prior to the conclusion of the period that the proceeding is to be suspended (and assuming settlement has not been reached), copies of the following documents, as referenced in the Order Imposing Civil Monetary Penalty: (1) the Notice of Violation and Proposed Imposition of Civil Penalty (NOV), dated May 20, 1999; (2) the Licensee's response to the NOV, dated February 25, 2000; and (3) the report (if any) of the NRC Office of Investigations (OI), concerning the investigation assertedly completed by OI on December 18, 1998. (The latter report may be furnished in redacted form, if necessary to protect the identities of confidential informants.) In addition, the Staff is requested to forward copies of inspection reports (if any) bearing on the matters at issue herein.

Following our receipt of the above documents, and assuming settlement has not been reached, the Licensing Board plans to hold a prehearing conference, either in the vicinity of the Licensee's place of business, at the ASLBP Hearing Room in Rockville, Maryland, or, alternatively, through a telephone conference call, for the purpose of defining further the matters in controversy, establishing schedules for discovery and other activities bearing upon

the evidentiary hearing, and discussing other matters relating to the hearing. We will announce the location and time of any such prehearing conference in a later order.

IT IS SO ORDERED.

For the Atomic Safety and
Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 7, 2000

[Copies of this Memorandum and Order, together with copies of the Notice of Hearing being issued simultaneously, were transmitted this date by e-mail to counsel for each of the parties.]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FIRSTENERGY NUCLEAR OPERATING) Docket No. 50-440-CIVP
COMPANY)
)
(Perry Nuclear Power Plant, Unit 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING REQUEST FOR HEARING AND SUSPENDING PROCEEDING PENDING SETTLEMENT NEGOTIATIONS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-440-CIVP
LB MEMORANDUM AND ORDER
(GRANTING REQUEST FOR
HEARING AND SUSPENDING
PENDING SETTLEMENT
NEGOTIATIONS)

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of November 2000