

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket No. 50-440-CIVP
FIRSTENERGY NUCLEAR OPERATING)	
COMPANY)	ASLBP No. 01-784-01-CivP
)	
(Perry Nuclear Power Plant, Unit 1;)	EA 99-012
Operating License No. NPF-58))	

SETTLEMENT AGREEMENT

The United States Nuclear Regulatory Commission (hereinafter "NRC") and FirstEnergy Nuclear Operating Company (hereinafter "FENOC"), in consideration of the promises and representations contained in this document, hereby agree as follows:

1. On August 3, 2000, the NRC issued an Order Imposing Civil Monetary Penalty ("Order") in Enforcement Action 99-012 (EA 99-012) with respect to an alleged violation by FENOC. That Order asserted that, as described in a Notice of Violation and Proposed Imposition of Civil Penalty ("Notice") sent to FENOC by letter dated May 20, 1999, Centerior Energy Corporation¹ (Commission licensee of the Perry Nuclear Power Plant ("Perry") prior to the FirstEnergy merger, thereafter and subsequent thereto FENOC), discriminated against a Radiation Protection Supervisor (RPS) on July 16-17, 1997, for engaging in protected activities within the scope of 10 C.F.R. § 50.7. The alleged discrimination consisted of verbal counseling on July 16, 1997 and the placement of a July 17, 1997 memorandum documenting same in the RPS's section personnel file on July 22, 1997 and subsequently removed from the file on

¹ Prior to NRC approval of the transfer of operating authority of Perry to FENOC, a new company, 63 Fed. Reg. 67939 (December 9, 1998), The Cleveland Electric Illuminating Company and Centerior Service Company were agents for the licensed owners of Perry and had exclusive responsibility for, and control over, the construction, operation, and maintenance of Perry. *Id.*

February 4, 1998. The protected activities pertained to a deposition that the RPS was to give (and subsequently gave) in the pre-hearing discovery phase of a Department of Labor Section 211 proceeding concerning alleged employment discrimination by Centerior Energy involving a co-worker of the RPS. The Order imposed a civil monetary penalty in the amount of \$110,000 based upon a Severity Level II violation.

2. On October 18, 2000, FENOC requested an enforcement hearing in response to the Order entered in EA 99-012 in order to present to an Atomic Safety and Licensing Board (hereinafter "Licensing Board") testimony and evidence to contest the alleged violation of 10 C.F.R. § 50.7 and the Order as unjustified under the evidence and applicable regulations and law, as well as to pursue resolution pursuant to 10 C.F.R. § 2.203.

3. By Memorandum and Order dated November 7, 2000, the presiding Licensing Board granted the request of FENOC for a hearing and also granted the Joint Motion of FENOC and the NRC Staff to suspend proceedings to afford said parties an opportunity to pursue settlement negotiations.

4. As the result of the above, FENOC and the NRC have concluded that it is in the respective interests of FENOC and the NRC, as well as the public interest, to settle the dispute at issue in EA 99-012. Such settlement is encouraged by 10 C.F.R. § 2.203. Therefore, FENOC and the NRC agree as follows:

- A. The NRC and FENOC will jointly move the Board to approve this Settlement Agreement and to terminate this proceeding, pursuant to 10 C.F.R. § 2.203.
- B. Although there has not been any adjudication of any violation of 10 C.F.R. § 50.7 by FENOC, as a full and final settlement of the dispute at issue in EA 99-012, and as a compromise of disputed claims, FENOC does not contest the existence of a Severity Level III violation in response to the Notice sent to FENOC by NRC of May 20, 1999 referenced and described in paragraph 1 above.

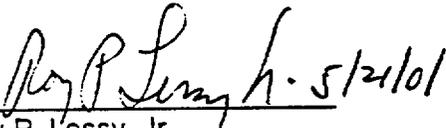
- C. The NRC agrees to reduce the amount of civil monetary penalty imposed by the Order to \$80,000 and the Severity Level of the violation to Severity Level III.
- D. As provided for in NUREG 1600, NRC Enforcement Policy, Paragraph C.2.a, Civil Penalty Assessment, Initial Escalated Action, escalated enforcement actions may impact discretion decisions for subsequent escalated actions for up to a two-year period. For this enforcement action, the NRC agrees that the two-year period is considered to have started on January 26, 1999 (the date of the letter from NRC Region III to FENOC re: Predecisional Enforcement Conference) and will have terminated on January 26, 2001, after which EA-99-012 will not be considered by the NRC in deciding subsequent escalated enforcement action involving FENOC as operator of Perry. Accordingly, this voluntary Settlement Agreement has no other use, nor can it create any new legal rights or liabilities, except as a full and final settlement of this matter.
- E. Within seven (7) business days of notice of approval of this Settlement Agreement by the presiding Licensing Board, FENOC agrees to pay a \$80,000 civil monetary penalty. Such payment shall be made by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and such check, draft, or statement indicating the date and time when an electronic transfer was made shall be mailed to Frank J. Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.
- F. This Settlement Agreement constitutes final disposition of the matters giving rise to EA 99-012 and to this litigation. In consideration of the terms of this Agreement, the NRC will assert no further enforcement or other claims, in any form or forum, related to the matters addressed in EA 99-012 and the underlying

inspection report, Notice, and correspondence, and FENOC will not pursue any further hearings on, or judicial review of, EA99-012.

IN WITNESS WHEREOF, FENOC and the NRC have caused this Settlement Agreement to be executed by their duly authorized representatives.

FIRSTENERGY NUCLEAR OPERATING
COMPANY

UNITED STATES NUCLEAR
REGULATORY COMMISSION



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Dated: May 22, 2001.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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COMPANY)
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(Perry Nuclear Power Plant, Unit 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND TERMINATE PROCEEDING" and "SETTLEMENT AGREEMENT" have been served upon the following persons by U.S. mail, first class, or by NRC internal distribution this 22nd day of May, 2001.

Administrative Judge
Charles Bechhoefer, Chairman
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T 3-F23
Washington, D.C. 20555

Administrative Judge
Anne Marshall Young
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
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Office of Commission Appellate
Adjudications
U.S. Nuclear Regulatory Commission
Mail Stop: O 16-C1
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Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
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Administrative Judge
Alan Rosenthal
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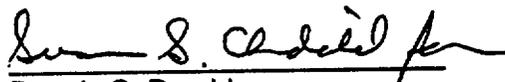
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Office of the Secretary
ATTN: Rulemaking and Adjudications
Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O 16-C1
Washington, D.C. 20555

Atomic Safety and Licensing Board
Panel
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John K. Wood
Vice President
Perry Nuclear Power Plant
10 Center Road
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Adjudicatory File
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