

December 2, 1998

Distribution w/encls:

Docket File	SRichards
PUBLIC	OGC
PD3-2 Reading	WBeckner, TSB
ACRS	EGA1
GGrant, RIII	TEssig
THarris (TLH3, copy of SE only)	

Mr. Lew W. Myers  
 Vice President - Nuclear, Perry  
 Centerior Service Company  
 P.O. Box 97, A200  
 Perry, OH 44081

SUBJECT: ORDER APPROVING THE TRANSFER OF OPERATING AUTHORITY TO A NEW  
 OPERATING COMPANY - PERRY NUCLEAR POWER PLANT, UNIT NO. 1  
 (TAC NO. MA2218)

Dear Mr. Myers:

The enclosed Order is in partial response to your application dated June 30, 1998 (PY-CEI/NRR-2292L), as supplemented by submittals dated October 27 (PY-CEI/NRR-2333L) and November 30, 1998 (PY-CEI/NRR-2339L), requesting approval of the transfer of operating authority under the license for the Perry Nuclear Power Plant, Unit No. 1, to a new operating company and issuance of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The enclosed Order provides consent to the proposed transfer, subject to the conditions described therein. A conforming amendment to the license will be issued at the time the transfer is completed.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

Original signed by:  
 Douglas V. Pickett, Senior Project Manager  
 Project Directorate III-2  
 Division of Reactor Projects III/IV  
 Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosures: 1. Order  
 2. Safety Evaluation  
 cc w/encls: See next page

Document Name: G:\PERRY\MA2218.ORD

OFFICE	PM:PD32	E	LA:PD32	E	PD:PD32				
NAME	DPickett		EBarnes		SRichards*				
DATE	12/2/98		12/2/98		11/18/98				

\*See previous concurrence  
 OFFICIAL RECORD COPY

9812100115 981202  
 PDR ADOCK 05000440  
 P PDR

READ THE OFFICIAL COPY

11  
 DF01

CP-3

December 2, 1998

Distribution w/encls:

Docket File	SRichards
PUBLIC	OGC
PD3-2 Reading	WBeckner, TSB
ACRS	EGA1
GGrant, RIII	TEssig
THarris (TLH3, copy of SE only)	

Mr. Lew W. Myers  
 Vice President - Nuclear, Perry  
 Centerior Service Company  
 P.O. Box 97, A200  
 Perry, OH 44081

SUBJECT: ORDER APPROVING THE TRANSFER OF OPERATING AUTHORITY TO A NEW  
 OPERATING COMPANY - PERRY NUCLEAR POWER PLANT, UNIT NO. 1  
 (TAC NO. MA2218)

Dear Mr. Myers:

The enclosed Order is in partial response to your application dated June 30, 1998 (PY-CEI/NRR-2292L), as supplemented by submittals dated October 27 (PY-CEI/NRR-2333L) and November 30, 1998 (PY-CEI/NRR-2339L), requesting approval of the transfer of operating authority under the license for the Perry Nuclear Power Plant, Unit No. 1, to a new operating company and issuance of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The enclosed Order provides consent to the proposed transfer, subject to the conditions described therein. A conforming amendment to the license will be issued at the time the transfer is completed.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,  
 Original signed by:  
 Douglas V. Pickett, Senior Project Manager  
 Project Directorate III-2  
 Division of Reactor Projects III/IV  
 Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosures: 1. Order  
 2. Safety Evaluation  
 cc w/encls: See next page

Document Name: G:\PERRY\MA2218.ORD

OFFICE	PM:PD32	E	LA:PD32	E	PD:PD32				
NAME	DPickett		EBarnh		SRichards*				
DATE	12/2/98		12/7/98		11/18/98				

\*See previous concurrence  
 OFFICIAL RECORD COPY



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 2, 1998

Mr. Lew W. Myers  
Vice President - Nuclear, Perry  
Centerior Service Company  
P.O. Box 97, A200  
Perry, OH 44081

SUBJECT: ORDER APPROVING THE TRANSFER OF OPERATING AUTHORITY TO A  
NEW OPERATING COMPANY - PERRY NUCLEAR POWER PLANT, UNIT  
NO. 1 (TAC NO. MA2218)

Dear Mr. Myers:

The enclosed Order is in partial response to your application dated June 30, 1998 (PY-CEI/NRR-2292L), as supplemented by submittals dated October 27 (PY-CEI/NRR-2333L) and November 30, 1998 (PY-CEI/NRR-2339L), requesting approval of the transfer of operating authority under the license for the Perry Nuclear Power Plant, Unit No. 1, to a new operating company and issuance of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the Code of Federal Regulations. The enclosed Order provides consent to the proposed transfer, subject to the conditions described therein. A conforming amendment to the license will be issued at the time the transfer is completed.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in cursive script that reads "Douglas V. Pickett".

Douglas V. Pickett, Senior Project Manager  
Project Directorate III-2  
Division of Reactor Projects III/IV  
Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosures: 1. Order  
2. Safety Evaluation

cc w/encs: See next page

L. Myers  
Centerior Service Company

Perry Nuclear Power Plant, Units 1 and 2

cc:

Mary E. O'Reilly  
FirstEnergy -- A290  
10 Center Road  
Perry, OH 44081

James R. Williams  
Chief of Staff  
Ohio Emergency Management Agency  
2855 West Dublin Granville Road  
Columbus, OH 43235-7150

Resident Inspector's Office  
U.S. Nuclear Regulatory Commission  
P.O. Box 331  
Perry, OH 44081-0331

Mayor, Village of Perry  
4203 Harper Street  
Perry, OH 44081

Regional Administrator, Region III  
U.S. Nuclear Regulatory Commission  
801 Warrenville Road  
Lisle, IL 60532-4531

Radiological Health Program  
Ohio Department of Health  
P.O. Box 118  
Columbus, OH 43266-0118

Sue Hiatt  
OCRE Interim Representative  
8275 Munson  
Mentor, OH 44060

Ohio Environmental Protection  
Agency  
DERR--Compliance Unit  
ATTN: Mr. Zack A. Clayton  
P.O. Box 1049  
Columbus, OH 43266-0149

Henry L. Hegrat  
Regulatory Affairs Manager  
Cleveland Electric Illuminating Co.  
Perry Nuclear Power Plant  
P.O. Box 97, A210  
Perry, OH 44081

Chairman  
Perry Township Board of Trustees  
3750 Center Road, Box 65  
Perry, OH 44081

FirstEnergy Corporation  
Michael Beiting  
Associate General Counsel  
76 S. Main  
Akron, OH 44308

State of Ohio  
Public Utilities Commission  
East Broad Street  
Columbus, OH 43266-0573

Mayor, Village of North Perry  
North Perry Village Hall  
4778 Lockwood Road  
North Perry Village, OH 44081

William R. Kanda, Jr., Plant Manager  
Cleveland Electric Illuminating Co.  
Perry Nuclear Power Plant  
P.O. Box 97, SB306  
Perry, OH 44081

Donna Owens, Director  
Ohio Department of Commerce  
Division of Industrial Compliance  
Bureau of Operations & Maintenance  
6606 Tussing Road  
P. O. Box 4009  
Reynoldsburg, OH 43068-9009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
THE CLEVELAND ELECTRIC ILLUMINATING )  
COMPANY )  
 )  
TOLEDO EDISON COMPANY )  
 )  
CENTERIOR SERVICE COMPANY )  
 )  
OHIO EDISON COMPANY )  
 )  
OES NUCLEAR, INC. )  
 )  
PENNSYLVANIA POWER COMPANY )  
 )  
DUQUESNE LIGHT COMPANY )  
 )  
(Perry Nuclear Power Plant, Unit No. 1) )

Docket No. 50-440

ORDER APPROVING APPLICATION REGARDING  
THE TRANSFER OF OPERATING AUTHORITY

I.

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company, Ohio Edison Company (OE), OES Nuclear, Inc., Pennsylvania Power Company (Penn Power), and Toledo Edison Company (TE) are the licensees of the Perry Nuclear Power Plant, Unit No. 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for, and control over, the physical construction, operation, and maintenance of PNPP as reflected in Operating License No. NPF-58. The U.S. Nuclear Regulatory Commission (NRC) issued License No. NPF-58 on March 18, 1986,

9812100116 981202  
PDR ADOCK 05000440  
P PDR

pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). The facility is located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II.

By application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, the licensees requested approval of the transfer of operating authority under the license to a new company, FirstEnergy Nuclear Operating Company (FENOC), and issuance of a conforming amendment. The licensees proposed to transfer operating authority under the license to FENOC to allow it to use and operate PNPP and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations in the current operating license. The licensees have also requested the issuance of a license amendment reflecting the transfer of operating authority. FENOC, a wholly-owned subsidiary of FirstEnergy Corporation, the direct or indirect parent of the owners of PNPP except for Duquesne Light Company, would become the licensed operator for PNPP and would have exclusive control over the operation and maintenance of the facility. The present plant organization, the oversight organizations, and the engineering and support organizations would be transferred essentially intact from the current operating licensees to FENOC. The technical qualifications of the FENOC organization, therefore, would be at least equivalent to those of the existing organization responsible for operating the plant. CSC, which has no ownership interest in PNPP, and is licensed only as an operator of PNPP, would be removed from the license.

Under the proposed arrangement, ownership of PNPP would remain unchanged; each owner would retain its current ownership interest. FENOC would not own any portion of PNPP. Likewise, the owners' entitlement to capacity and energy from PNPP would not be affected by the proposed transfer of operating responsibility for PNPP to FENOC. The owners would

continue to provide all funds for FENOC to operate, maintain, and decommission PNPP. The owners' responsibilities would include providing funding for any emergency situations that might arise at PNPP.

The licensees requested the Commission's approval of the transfer of operating authority to FENOC and issuance of a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of this application for approval and an opportunity for a hearing were published in the *Federal Register* on August 4, 1998 (63 FR 41600), and an Environmental Assessment and Finding of No Significant Impact was published in the *Federal Register* on September 10, 1998 (63 FR 48531).

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information contained in the submittals of June 30, October 27, and November 30, 1998, and other information before the Commission, the NRC staff has determined that FENOC is qualified to hold the license to the extent and for the purposes described above, and that the transfer of the license as described above is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. These findings are supported by a Safety Evaluation dated December 2, 1998.

### III.

Accordingly, pursuant to Sections 105, 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2135, 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission consents to the transfer of the license as described herein to FENOC, subject to the following conditions:

- (1) FENOC shall not market or broker power or energy from the Perry Nuclear Power Plant, Unit No. 1. The owners are responsible and accountable for the actions of FENOC to the extent that said actions affect the marketing or brokering of power or energy from the Perry Nuclear Power Plant, Unit No. 1, and, in any way, contravene the antitrust license conditions contained in the license.
- (2) Should the formation of FENOC and transfer of operating authority not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

Action on the proposed conforming license amendment will be taken upon implementation of the transfer approved by this Order.

For further details with respect to this Order, see the licensees' application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 2<sup>nd</sup> day of December 1998.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by:  
Roy P. Zimmerman, Acting Director  
Office of Nuclear Reactor Regulation

Document Name: G:\PERRY\MA2218.ORD

OFFICE	PM:PD32	E	LA:PD32	E	PD:PD32	BC:PGEB		
NAME	DPickett		EBarnh		SRichards*	TEssig*		
DATE	12/2/98		12/2/98		11/18/98	11/17/98		
OFFICE	TECHED		OGC		D:DRPW	ADPR	D:NRR	REZ
NAME	BMcClure*		SHom*		EAdensam*	BBoger*	SCollins	
DATE	10/02/98		12/02/98		11/19/98	11/21/98	12/2/98	

\*See previous concurrence

OFFICIAL RECORD COPY

12/2/98

- (1) FENOC shall not market or broker power or energy from the Perry Nuclear Power Plant, Unit No. 1. The owners are responsible and accountable for the actions of FENOC to the extent that said actions affect the marketing or brokering of power or energy from the Perry Nuclear Power Plant, Unit No. 1, and, in any way, contravene the antitrust license conditions contained in the license.
- (2) Should the formation of FENOC and transfer of operating authority not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

Action on the proposed conforming license amendment will be taken upon implementation of the transfer approved by this Order.

For further details with respect to this Order, see the licensees' application dated June 30, 1998, as supplemented by submittals dated October 27 and November 30, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 2<sup>nd</sup> day of December.

FOR THE NUCLEAR REGULATORY COMMISSION

  
Roy P. Zimmerman, Acting Director  
Office of Nuclear Reactor Regulation



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED TRANSFER OF OPERATING AUTHORITY TO FENOC

FACILITY OPERATING LICENSE NO. NPF-58

CLEVELAND ELECTRIC ILLUMINATING COMPANY AND

CENTERIOR SERVICE COMPANY

DOCKET NO. 50-440

PERRY NUCLEAR POWER PLANT, UNIT NO. 1

1.0 INTRODUCTION

By application dated June 30, 1998, and as supplemented by submittals dated October 27 and November 30, 1998, The Cleveland Electric Illuminating Company (CEI) and Centerior Service Company (CSC), as the current licensed operators of the Perry Nuclear Power Plant, Unit No. 1 (PNPP), and on behalf of CEI, Toledo Edison Company (TE), Ohio Edison Company (OE), OES Nuclear, Inc., Pennsylvania Power Company (Penn Power), and Duquesne Light Company (DL), as the owners of PNPP, requested approval of the transfer of operating authority and a conforming amendment for the PNPP Facility Operating License No. NPF-58. With the exception of DL, all holders of this license are wholly-owned direct or indirect subsidiaries of FirstEnergy Corporation (FE). The proposed approval would allow FirstEnergy Nuclear Operating Company (FENOC) as a new operating company to assume exclusive responsibility for the operation and maintenance of PNPP. Currently, CEI and CSC have that responsibility under the license. The PNPP facility is a single-unit nuclear power station located in Lake County, Ohio.

Under the requested transfer approval and conforming license amendment, the owners will be authorized only to possess the facility, CSC will be removed entirely from the license, and FENOC added to the license. Ownership of the facility will not be affected by the proposed transfer of operating authority from CSC and CEI to FENOC. Each owner will retain its current ownership interest: CEI owns 31.11 percent, TE owns 19.91 percent, OE and OES own 30 percent, Penn Power owns 5.24 percent, and DL owns 13.74 percent. FENOC will not own any portion of PNPP. Also, the owners' entitlement to capacity and energy from PNPP will not be affected by the proposed transfer of operating responsibility.

9812100118 981202  
PDR ADOCK 05000440  
P PDR

A similar application has been submitted separately to the NRC to transfer operating authority for the Davis-Besse Nuclear Power Station, Unit No. 1, to FENOC. The Davis-Besse station is also located in Ohio, with two FE subsidiaries (TE and CEI) owning 100 percent of this facility.

## 2.0 BACKGROUND

The owners of PNPP will enter into an operating agreement with FENOC, which is an Ohio corporation that is a wholly owned subsidiary of FE. The application states that FENOC's sole corporate purpose will be the operation of FE's nuclear power plants on behalf of, and for the benefit of, their owners. The new operating agreement will specify the relationship between the PNPP owners and FENOC as the sole operator of the PNPP. This agreement will define the rights, responsibilities, and limitations of FENOC's authority regarding the operation of the facility and will state that FENOC has the sole authority, as the operator of PNPP, to make all decisions within the scope of the operating license relating to public health and safety.

The application also states that the owners of PNPP will continue to provide all funds for the operation, maintenance, and decommissioning of the plant, including funding for any emergency situations that might arise at the facility. Upon the effective date of the transfer, substantially all employees of CEI and CSC who are presently dedicated to operation of PNPP will become employees of FENOC.

## 3.0 EVALUATION

This NRC staff review of the proposed transfer of operating authority under the PNPP facility operating license covers the following areas: financial qualifications, antitrust considerations, foreign ownership and control considerations, and technical qualifications. Each of these areas is evaluated below.

### 3.1 Financial Qualifications

The proposed transfer of operating authority will not adversely affect the ability of the PNPP owners to obtain or provide the funds necessary to cover the costs of the operation, maintenance, repair, decontamination, and decommissioning of PNPP. The current owners will continue to be liable for such costs as under the current license, with no financial responsibility being transferred to FENOC.

The following statements summarize information from the application regarding key interrelationships that the operating agreement between the facility owners and FENOC will establish:

FENOC will not have any ownership interest in PNPP but will have overall responsibility for its safe operation. FENOC will operate the facility in accordance with the operating license and shall have exclusive responsibility for making safety decisions.

The owners will retain their current authority to review and approve budgets of PNPP. This will not encumber FENOC's ability to make operational safety decisions and will not impact the safe operation of PNPP.

All costs of PNPP, incurred or accrued, are liabilities of the facility owners when incurred or accrued and are borne in proportion to their respective undivided interests in PNPP, and the owners will commit to provide FENOC funds to pay these costs.

Thus, the proposed transfer does not change the current financial obligations of the PNPP owners. Further, the status of the owners as electric utilities, as defined by the NRC in 10 CFR 50.2, will be unaffected by the proposed transfer. Accordingly, there will be no change in their financial qualifications. Thus, the NRC staff has determined that there will be no adverse safety consequences from the proposed change in relation to the future funding of operating, maintenance, and decommissioning costs of PNPP.

### 3.2 Antitrust Considerations

As noted, the proposed transfer of operating authority to FENOC will not affect existing ownership of PNPP or current entitlement to its capacity and energy. FENOC will devote itself exclusively to operating FE's nuclear power plants, and it will not be involved in the marketing or brokering of power or energy from these facilities. To reinforce this aspect of the transfer, the application proposes the modification of the antitrust conditions section of the license to reflect, in part, the following:

FENOC shall not market or broker power or energy from the Perry Nuclear Power Plant, Unit No. 1. The Owners are responsible and accountable for the actions of its agent, FENOC, to the extent said agent's actions affect the marketing or brokering of power or energy from the Perry Nuclear Power Plant, Unit No. 1 and, in any way, contravene the antitrust conditions of this paragraph or Appendix C of this license.

Further, the application acknowledges that the transfer will not alter the existing antitrust license conditions applicable to the owners and that those conditions will remain applicable to all owners.

Since the owners will continue to be bound by the existing antitrust license conditions, the only antitrust issue is whether there are any potential antitrust concerns with respect to the addition of FENOC to the license. The staff has determined that conditioning approval of the transfer on prohibiting FENOC from marketing or brokering power or energy from the facility, and on declaring the owners responsible and accountable for the actions of FENOC with respect to the marketing or brokering of power and contravention of the antitrust license conditions will provide reasonable assurance that any such concerns will be precluded, thus removing any need to conduct any further antitrust review. The proposed amendments to the license discussed above are consistent with these conditions of approval of the transfer.

### 3.3 Foreign Ownership and Control Considerations

FENOC will be a wholly owned subsidiary of FE, as are all but one of the current owners, as well as the operators. According to the application, all directors and principal officers of FENOC will be citizens of the United States, and FENOC will not be owned, controlled, or dominated by foreign interests. The staff has no reason to believe otherwise.

### 3.4 Technical Qualifications

According to the application, the current plant organization, the oversight organizations, and the engineering and support organizations would be transferred essentially intact to FENOC. The technical qualifications of the FENOC organization, therefore, would be at least equivalent to those of the existing organization.

The licensees also stated that a central objective in planning the proposed transfer of employees and operating responsibilities to FENOC has been to ensure that plant operation is not disrupted and to respect the integrity of the present, successful organization. According to the licensees, FENOC will operate, manage, and maintain PNPP in accordance with the conditions and requirements established by the NRC, with the same regard for public and personal safety heretofore exemplified by the current operators. The nuclear organization of PNPP will be preserved in the FENOC organization with only one change: the senior nuclear executive will report directly to the Directors of FENOC rather than to the President and Chief Operating Officer of CSC. The current PNPP Vice President, Nuclear, will become a Vice President of FENOC and will continue to be the officer at the site responsible for the overall safe operation and maintenance of PNPP.

Based on the above, the staff finds that FENOC will be technically qualified to operate PNPP.

### 3.5 Summary

On the basis of the preceding determinations, the staff concludes that FENOC will be technically qualified to operate the facility and that the proposed action involving FENOC will not adversely affect the financial qualifications of the current owners of PNPP with respect to its operation and decommissioning. Also, there do not appear to be any problematic antitrust or foreign ownership considerations that would result from the proposed action, provided certain conditions, discussed earlier, are imposed with respect to the marketing or brokering of power by FENOC and the responsibility of the owners for any of FENOC's actions in that regard.

## 4.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21 and 51.35, an environmental assessment and finding of no significant impact was published in the Federal Register on September 10, 1998 (63 FR 48531).

**5.0 CONCLUSION**

In consideration of the foregoing, and with the conditions described above, the staff concludes that FENOC is qualified to hold the license to the extent of, and for the purposes proposed by, the application for approval of the transfer of operating authority, and that the transfer is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: A. McKeigney  
D. Pickett

Date: December 2, 1998