

December 19, 2003

EA-03-208

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
P. O. Box 97, A210
10 Center Road
Perry, OH 44081

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 3-2002-031

Dear Mr. Kanda:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into an alleged violation of Technical Specification overtime requirement on March 12 and March 13, 2001, at the FirstEnergy Nuclear Operating Company's (FENOC) Perry Nuclear Power Plant. The Office of Investigations concluded that FENOC employees and employees of a FENOC contractor deliberately failed to obtain prior approval for overtime and deliberately falsified information on related time cards. Based on information developed during the OI investigation, an apparent willful violation of Perry Plant Technical Specification 5.2.2.(e), requiring preapproval of overtime to be worked in excess of 72 hours in a seven day period, was identified and is being considered for escalated enforcement in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600. The current Enforcement Policy is included at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. The synopsis from the OI report and a summary of the investigation are enclosed.

Briefly, on or about March 12, 2001, contract technicians, responsible for testing motor operated valves (MOVs) at the Perry Nuclear Power Plant discussed a plan to work on their regularly scheduled day off and charge the hours worked on that day towards days later in the week. At least one technician mentioned this plan during a regular shift turnover. That meeting was attended by at least three FENOC supervisors associated with the MOV testing program. A comment about "creative timekeeping," was attributed to at least one technician. Another worker reminded those attending the turnover meeting that regardless of the number of hours the technicians planned to work, plant procedures limited them to a maximum number of hours in a given period of time. Following this reminder, none of the supervisors asked the technician about his comment regarding "creative timekeeping," sought preapproval of the overtime required by Technical Specification, or otherwise followed-up on the issue. As a result, the technicians worked in excess of 72 hours in a seven day period without a preapproved overtime deviation with one technician working 108 hours in a nine day period and the other working 120 hours in a 10 day period. However, the time cards for the technicians were written in a manner that indicated they did not work in excess of 72 hours in a seven day period.

The NRC recognizes that FENOC identified and corrected the apparent violation; nevertheless, the NRC believes that a Predecisional Enforcement Conference (PEC) is necessary to discuss the apparent willful aspect associated with the potential violation. The NRC staff has been in contact with Mr. Vern Higaki to schedule a PEC. At the PEC, FENOC is requested to address the apparent willful violation of Technical Specification 5.2.2.e and the apparent falsification of the time cards for the workers. The PEC will be transcribed, held in the NRC Region III office, Lisle, Illinois, and closed to public observation. The conference is scheduled for 9:00 a.m.(CST), on February 4, 2004.

We believe it is important for certain members of your staff, who were involved in the issue, to attend the PEC. The requested individuals were specified during the telephone conversations with your staff.

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 advised that the number and characterization of the apparent violation may change as a result of further NRC review.

The decision to hold a conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. In addition, the conference is an opportunity for FENOC to provide perspectives on: (1) the severity of any 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.B.2 of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of enforcement discretion in accordance with Section VII. The conference will give you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision, including any misunderstanding of the facts as presented.

If you have any questions, please contact David Hills, Chief, Mechanical Engineering Branch, at (630) 829-9733.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, without the Enclosure 2, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket No. 50-440
License No. NPF-58

Enclosures: 1. Synopsis from OI Report
2. Summary of OI Report **EXEMPT FROM DISCLOSURE**

cc w/encls 1 & 2: G. Leidich, President - FENOC
V. Higaki, Manager, Regulatory Affairs

cc with encl. 1 only K. Cimorelli, Acting Director,
Maintenance Department
J. Messina, Director, Nuclear
Services Department
T. Lentz, Director, Nuclear
Engineering Department
T. Rausch, Plant Manager,
Nuclear Power Plant Department
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

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Nuclear Power Plant Department
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health

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*See Previous Concurrence

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DATE	12/18/03	12/19/03		

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¹ Approval to release information from OI Report of Investigation

² HQ concurrence received on 12/15/03, from Jennifer Dixon-Herrity, OE.

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SYNOPSIS

This investigation was initiated on October 23, 2002, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine whether Atlantic Group (AG) contractors and/or Perry Nuclear Power Station (Perry) supervisors deliberately violated technical specification requirements regarding overtime and deliberately falsified overtime records in violation of 10 CFR 50.5, 10 CFR 50.9 and Perry Technical Specification 5.2.2.e.

Based upon the evidence developed, this investigation did substantiate that AG contractors and Perry supervisors deliberately violated overtime technical specification requirements regarding overtime and deliberately falsified overtime records.

Case No. 3-2002-031

Enclosure 1