

July 27, 2005

Mr. Gary R. Leidich
President and Chief Nuclear Officer
FirstEnergy Nuclear Operating Company
76 South Main Street
Akron, Ohio 44308

SUBJECT: NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER OF FACILITY
OPERATING LICENSE AND CONFORMING AMENDMENT, AND
OPPORTUNITY FOR A HEARING - PERRY NUCLEAR POWER PLANT,
UNIT NO. 1 (TAC NO. MC7226)

Dear Mr. Leidich:

Enclosed is a copy of a notice entitled, "Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing," related to the application dated June 1, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company. This application, pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), seeks NRC approval of the direct transfer of Facility Operating License No. NPF-58 for the Perry Nuclear Power Plant, Unit No. 1, to the extent held by OES Nuclear, Inc. (OES Nuclear), the Cleveland Electric Illuminating Company (Cleveland Electric) and the Toledo Edison Company (Toledo Edison) to FirstEnergy Nuclear Generation Corporation (FENGenCo). The application also seeks, pursuant to 10 CFR 50.90, the issuance of a conforming amendment to the license to reflect the transfer. The proposed conforming amendment would remove OES Nuclear, Cleveland Electric and Toledo Edison from the license, including the antitrust license conditions, and add FENGenCo to the license and antitrust conditions.

This notice is being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

William A. Macon, Jr., Project Manager, Section 2
Project Directorate III
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosure: Notice of Perry Transfer

cc w/encl: See next page

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Perry Nuclear Power Plant, Unit 1

cc:

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Perry, OH 44081-0331

Mayor, Village of Perry
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Perry, OH 44081-0100

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Perry Township Board of Trustees
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Public Utilities Commission
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Mayor, Village of North Perry
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North Perry Village, OH 44081

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Ohio Department of Commerce
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Reynoldsburg, OH 43068-9009

Mr. Lew W. Myers
Chief Operating Officer
FirstEnergy Nuclear Operating Company
76 South Main Street
Akron, OH 44308

Perry Nuclear Power Plant, Unit 1

cc:

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FirstEnergy Nuclear Operating Company
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Richard Anderson
Vice President
FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant
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10 Center Road
Perry, OH 44081

UNITED STATES NUCLEAR REGULATORY COMMISSION

FIRSTENERGY NUCLEAR OPERATING COMPANY

PERRY NUCLEAR POWER PLANT, UNIT NO. 1

DOCKET NO. 50-440

NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER OF
FACILITY OPERATING LICENSE AND CONFORMING AMENDMENT,
AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF-58 for the Perry Nuclear Power Plant, Unit No. 1 (Perry), to the extent held by OES Nuclear, Inc. (OES Nuclear), the Cleveland Electric Illuminating Company (Cleveland Electric) and the Toledo Edison Company (Toledo Edison). The transfer would be to FirstEnergy Nuclear Generation Corporation (FENGenCo). The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer.

According to an application for approval dated June 1, 2005, as supplemented by letter dated July 15, 2005, filed by FirstEnergy Nuclear Operating Company (FENOC), on behalf of OES Nuclear, Cleveland Electric, Toledo Edison and FENGenCo, FENGenCo would assume OES Nuclear's 17.42 percent undivided ownership interest in Perry, Cleveland Electric's 44.85 percent undivided ownership interest in Perry and Toledo Edison's 19.91 percent undivided ownership interest in Perry following approval of the proposed license transfers. FENOC, currently the licensed operator of Perry, would remain so and continue to be responsible for the operation and maintenance of Perry. Ohio Edison's 12.58 percent leased interest in Perry

would not be changed. No physical changes to the Perry facility or operational changes are being proposed in the application.

The proposed conforming amendment generally would replace references to OES Nuclear, Cleveland Electric and Toledo Electric in the license with references to FENGenCo, as appropriate, to reflect the proposed transfer of the license. With regard to the antitrust conditions in the license, the application proposes changes such that FENGenCo would be subject to the antitrust conditions, and would be responsible for any actions of FENOC that contravene the antitrust conditions. Once removed from the license, OES Nuclear, Cleveland Electric and Toledo Electric as non-licensees would no longer be subject to the antitrust conditions contained in the Perry license.

Pursuant to 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. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant

hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C, "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)-(viii).

Requests for a hearing and petitions for leave to intervene should be served upon David W. Jenkins, Esq., FirstEnergy Corp., 76 South Main Street, Mail Stop A-Go-18, Akron, OH 44308, tel: (330) 384-5037, and email: djenkins@firstenergycorp.com; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the FEDERAL REGISTER and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this FEDERAL REGISTER notice.

For further details with respect to this action, see the application dated June 1, 2005, and the supplemental letter dated July 15, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the

NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 27th day of July 2005.

FOR THE NUCLEAR REGULATORY COMMISSION
/RA/

William A. Macon, Jr., Project Manager, Section 2
Project Directorate III
Division of Licensing Project Management
Office of Nuclear Reactor Regulation