

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF NUCLEAR REACTOR REGULATION

J. E. Dyer, Director

In the Matter of)	Docket Nos. 50-334 and
)	50-412
FIRSTENERGY NUCLEAR)	
OPERATING COMPANY)	License Nos. DPR-66 and
)	NPF-73
)	
)	
Beaver Valley Power Station, Unit Nos. 1 and 2)	
)	

PROPOSED DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

By letter dated April 12, 2005, Mr. David Lochbaum of the Union of Concerned Scientists (the Petitioner) filed a petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206. The Petitioner requested that the Nuclear Regulatory Commission (NRC or Commission) either (1) take enforcement action against FirstEnergy Nuclear Operating Company (FENOC or the licensee) and impose a civil penalty of at least \$55,000, or (2) move the license renewal application for the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2), to the end of the current review queue¹.

¹The NRC determined and notified the Petitioner by letter dated May 25, 2005, that the Petitioner's request for moving the license renewal application for BVPS-1 and 2 to the end of the current review queue did not meet the guidelines for consideration pursuant to 10 CFR 2.206.

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As a basis for the requests, the Petitioner cited NRC news release 05-052, dated March 24, 2005, which stated that NRC returned the February 9, 2005, license renewal application submitted by FirstEnergy Nuclear Operating Company. Mr. Lochbaum quoted a statement made by Mr. David Matthews, Director of the Division of Regulatory Improvement Programs at NRC:

The NRC's primary mission is ensuring protection of public health and safety, and we cannot do that for an additional 20 years of Beaver Valley operation unless we have complete, accurate, and up-to-date information on the plant. Given the gaps in the current application, we simply could not properly review FirstEnergy's request.

Mr. Lochbaum further stated that the licensee's February 9, 2005, submittal was not complete and accurate in all material respects and that this is a violation of 10 CFR 50.9(a) which requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects. Mr. Lochbaum stated his basis for the alternative sanction of moving the license renewal application: Moving the application to the end of the current queue would allow time for the licensee to ensure the resubmittal is complete and accurate. It would also allow NRC to review the application without requiring additional resources to recheck the resubmittal concurrent with other license renewal reviews, which Mr. Lochbaum stated could compromise the quality of the NRC review.

The NRC's Petition Review Board (PRB) met on April 19, 20, and 28, 2005, to discuss the requests to take enforcement action and issue at least a \$55,000 civil penalty or, alternatively, move the licensee's application to the end of the current review queue. Mr. Lochbaum declined an invitation to participate in the initial PRB discussions.

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In an acknowledgment letter dated May 20, 2005, the NRC informed the Petitioner that the portion of the petition requesting that enforcement action be taken was accepted for review under 10 CFR 2.206 and had been referred to the Office of Nuclear Reactor Regulation for appropriate action.

Copies of the petition and acknowledgment letter are available for inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at <<http://www.nrc.gov/reading-rm/adams.html>> under ADAMS Accession No. ML050180430. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

II. DISCUSSION

As a basis for the requested actions, the Petitioner stated that numerous aids and guidance documents, which are linked to the NRC's Web site, could have been used to assist the licensee in ensuring it provided a complete and accurate application for license renewal. The Petitioner further stated that the 28 previously approved license renewal applications, and the publicly available safety evaluations related to those applications, would have provided ample guidance to the licensee for providing a complete and accurate license renewal application.

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The Petitioner cited Enforcement Action (EA) EA-088, dated June 27, 2001, wherein NRC imposed a \$55,000 civil penalty on the licensee of the Palisades Plant for failing to provide complete and accurate information to NRC in letters dated February 16 and 18, 2000, as a basis for issuing a civil penalty of at least \$55,000 to the licensee for BVPS-1 and 2. The Petitioner noted that, in EA-088, NRC acknowledged to the Palisades Plant licensee that the failure to provide complete and accurate information was the result of an oversight by members of the licensee's staff and not a deliberate attempt to withhold information material to NRC's decision-making process. Nonetheless, NRC issued the \$55,000 civil penalty to the Palisades Plant licensee. The Petitioner stated that FENOC deserves the same sanction for the same violation.

The Petitioner further states that FENOC is currently under investigation by the Department of Justice, based on a September 2003 referral by NRC, for failing to provide complete and accurate information to the NRC in fall 2001. The Petitioner also referenced the licensee's October 24, 2003, letter to the NRC Region III Regional Administrator, which stated that FENOC has taken actions to ensure that future regulatory submittals are complete and accurate in all material respects, as further evidence that the licensee has knowledge of the regulatory consequences for failing to provide complete and accurate information. The Petitioner stated that the licensee should pay the consequences of failing to follow the commitment contained in the October 24, 2003, letter to properly validate statements of fact used in regulatory submittals before the submittals are issued to NRC.

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Petitioner's Concerns

Despite stating in an October 24, 2003, letter to the NRC Region III Regional Administrator, that corrective actions had been implemented to properly validate statements of fact contained in all future regulatory submittals before the submittals can be issued to NRC, the Petitioner stated that the licensee submitted incomplete and inaccurate information in its license renewal application for BVPS-1 and 2 and that the licensee should be cited pursuant to 10 CFR 50.9 for failing to provide an application that was complete and accurate in all material respects and assessed a civil penalty of at least \$55,000. These concerns and the NRC staff's evaluation of the concerns are discussed below.

NRC Staff's Evaluation

The licensee submitted its BVPS-1 and 2 license renewal application on February 9, 2005. The NRC staff performed an acceptance review of the license renewal application to determine if sufficient information existed for the NRC staff to begin its detailed technical review. The NRC staff determined that the application did not contain sufficient detail and therefore was not acceptable for docketing. This determination was conveyed to the applicant by letter dated March 24, 2005. The licensee responded to this letter by letter dated April 19, 2005.

All but one of the statements in the application, which were alleged by the Petitioner to be incomplete or inaccurate in violation of 10 CFR 50.9, required additional information or clarification from the licensee. The statements were insufficient in the sense that additional

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levels of detail were required for the NRC staff to conduct its review and develop a sufficient basis to support a regulatory decision. The NRC rules on completeness and accuracy of information were intended to apply a rule of reason in assessing completeness of information and also whether the NRC relied upon the information (“Completeness and accuracy of information,” 52 FR 49362, December 31, 1987).

The NRC staff determined during its acceptance review that there were four examples of technically incorrect information contained in the application. In one of these examples, the licensee stated that cast iron was used in the reactor coolant system. This statement was factually inaccurate, and a violation of 10 CFR 54.13, “Completeness and accuracy of information.” This regulation provides that information provided by an applicant for a renewal license must be complete and accurate in all material respects. 10 CFR 54.13 applies to license renewal applications and is analogous to 10 CFR 50.9, “Completeness and accuracy of information,” contained in Part 50 and cited by the Petitioner.

In the remaining three examples of technically incorrect information, the staff would require additional information to determine if these examples were also violations of 10 CFR 54.13. The staff did not pursue this additional information because, in part, it was not used as the basis for a regulatory decision

All four examples of technically incorrect information were easily identified by the staff and, in part, influenced the staff’s decision to return the renewal application. The fact that the staff did not use this information as the basis for making a regulatory decision, in part, determines the significance of the violation or potential violation. This information, had it been

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considered complete and accurate, as a minimum, would not have resulted in the reconsideration of a regulatory position or lead to further inspection or substantive further inquiry in the form of a formal request for additional information. As such, the violation would not be considered for escalated enforcement or warrant a civil penalty in accordance with Supplement VII.C.1 of the NRC Enforcement Policy.

In its letter of April 19, 2005, the licensee indicated that it would take corrective action to address the deficiencies contained in its license renewal application. In a public meeting on July 22, 2005, the licensee provided the results of its root-cause investigation of the failure to properly validate the information contained in its license renewal application and its plans to re-validate the license renewal application's technical supporting information. In a letter dated August 11, 2005, the licensee described its plans for correcting the deficiencies in its license renewal application in order to support a resubmission of the application by the end of the first quarter of 2007. The licensee has entered the deficiencies leading to the failure to properly validate information violation in its corrective action program and has completed immediate corrective actions with long-term corrective actions in progress.

The NRC staff has determined that the submission of incorrect information is a violation of 10 CFR 54.13 and is appropriately classified as minor. Pursuant to Section 3.9 of the NRC Enforcement Manual², NRC did not document its identification of this minor violation in an inspection report or correspondence to the applicant. Pursuant to Section 3.9 of the NRC

² "While licensees must correct minor violations, minor violations do not normally warrant documentation in inspection reports or inspection records and do not warrant enforcement action."

Enforcement Manual and the NRC Enforcement Policy, Sections IV.B, VI.A-B, and Supplement VII.E, NRC did not cite this minor violation and did not propose a civil penalty.

The Petitioner cites of EA-01-088, dated June 27, 2001, related to a Palisades enforcement action and issuance of a civil penalty as a basis for issuing at least a \$55,000 civil penalty for the BVPS-1 and 2 licensee. In the Palisades case, the failure to provide complete and accurate information affected the NRC's ability to perform its regulatory function and resulted in the issuance of a Notice of Enforcement Discretion and exigent Technical Specification change with an incomplete understanding of the potential safety impact of the plant. Because the NRC did not accept the BVPS-1 and 2 licensee's license renewal application for docketing, the NRC's regulatory function was unaffected. Accordingly, with respect to this violation of 10 CFR 54.13, the request to cite the licensee for the violation and assess a civil penalty of at least \$55,000 is denied.

III. CONCLUSION

Based on the above, the NRC staff concludes that the licensee did submit an inaccurate statement in its February 9, 2005, license renewal application in violation of 10 CFR 54.13, that the violation has been processed in the licensee's corrective action program, and that in accordance with the NRC Enforcement Policy and the NRC Enforcement Manual, no citation was issued and no civil penalty assessed for the violation. Accordingly, NRC denies the Petitioner's requests as described in Section I, above.

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As provided in 10 CFR 2.206(c), a copy of this DD will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the DD will constitute the final action of the Commission 25 days after the date of the DD unless the Commission, on its own motion, institutes a review of the DD within that time.

Dated at Rockville, Maryland, this day of .

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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