

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-334 AND 50-412

LICENSE NOS. DPR-66 AND NPF-73

FIRSTENERGY NUCLEAR OPERATING COMPANY (FENOC), ET. AL.,

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition dated April 12, 2005, filed by Mr. David Lochbaum, of the Union of Concerned Scientists, hereinafter referred to as the "Petitioner." The petition concerns the operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and 2).

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 queue.

As a basis for the requests, the Petitioner cited NRC news release 05-052, dated March 24, 2005, which stated that the NRC returned the February 9, 2005, license renewal application submitted by FirstEnergy Nuclear Operating Company. The Petitioner 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.

The Petitioner 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. The Petitioner 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 the NRC to review the application without requiring additional resources to recheck the resubmittal concurrent with other license renewal reviews, which the Petitioner stated could compromise the quality of the NRC review.

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.

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.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioner and to the licensee for comment by letters dated September 15, 2005. The NRC staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to take enforcement action against the licensee and impose a civil penalty of at least \$55,000 is denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD-05-06), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the 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>.

The Director's Decision addresses (1) whether a violation of NRC regulations occurred with respect to the licensee's license renewal application and (2) whether enforcement action should be taken.

With respect to the first issue, the NRC staff concluded that the licensee's license renewal application did contain an example of incorrect information and that the submission of incorrect information in the licensee's application is a violation of 10 CFR 54.13. With respect to the second issue, the NRC staff concluded that the violation is appropriately classified as minor and pursuant to Section 3.9 of the NRC Enforcement Manual, the NRC did not document its identification of this minor violation in an inspection report or correspondence to the applicant. Further, pursuant to Section 3.9 of the NRC Enforcement Manual and the NRC Enforcement Policy, Sections IV.B, VI.A-B, and Supplement VII.E, the NRC did not cite this minor violation and did not propose a civil penalty.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 2nd day of December 2005.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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