



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

FIRSTENERGY NUCLEAR OPERATING COMPANY

DOCKET NO. 50-440

PERRY NUCLEAR POWER PLANT, UNIT 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 137
License No. NPF-58

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
 - A. The applications for amendment by the FirstEnergy Nuclear Operating Company (the licensee) dated May 18 and June 1, 2005, as supplemented by letters dated July 15 and October 31, 2005, comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, the license is amended as indicated in the attachment to this license amendment.

3. The license amendment is effective as of its date of issuance and shall be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Mindy S. Landau, Branch Chief
Plant Licensing Branch III-2
Division of Operating Reactors
Office of Nuclear Reactor Regulation

Attachment: Changes to Facility Operating
License NPF-58

Date of Issuance: December 16, 2005

ATTACHMENT TO LICENSE AMENDMENT NO. 137

FACILITY OPERATING LICENSE NO. NPF-58

DOCKET NO. 50-440

Replace the following pages of the Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove

License Page 1
License Page 2
License Page 3
License Page 4
License Page 5
License Page 7

Appendix C Page 1

Insert

License Page 1
License Page 2
License Page 3
License Page 4
License Page 5
License Page 7
License Page 8
Appendix C Page 1

UNITED STATES
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FIRSTENERGY NUCLEAR OPERATING COMPANY
FIRSTENERGY NUCLEAR GENERATION CORP.
OHIO EDISON COMPANY

DOCKET NO. 50-440
PERRY NUCLEAR POWER, PLANT, UNIT NO. 1
FACILITY OPERATING LICENSE

License No. NPF-58

1. The Nuclear Regulatory Commission (the Commission) has found that:

- A. The application for license filed by FirstEnergy Nuclear Operating Company (FENOC)¹ acting on its own behalf and as agent for FirstEnergy Nuclear Generation Corp. and Ohio Edison Company, (licensees) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
- B. Construction of the Perry Nuclear Power Plant, Unit No. 1 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-148 and the application, as amended, the provisions of the Act, and the regulations of the Commission;

¹FENOC is authorized to act as agent for FirstEnergy Nuclear Generation Corp. and Ohio Edison Company, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

- C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);
 - E. The FirstEnergy Nuclear Operating Company is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. The licensees have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
 - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
 - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of this Facility Operating License No. NPF-58, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
 - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70.
2. Based on the foregoing findings regarding this facility, the Partial-Initial Decisions issued December 2, 1983, and September 3, 1985, by the Atomic Safety and Licensing Board in regard to this facility (affirmed by ALAB-841, dated July 25, 1986) and pursuant to approval by the Nuclear Regulatory Commission at a meeting on November 7, 1986, Facility Operating License No. NPF-58, which supersedes the license for fuel loading and low power testing, License No. NPF-45, issued on March 18, 1986, is hereby issued to FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation Corp., and Ohio Edison Company, (the licensees) to read as follows:
- A. The license applies to the Perry Nuclear Power Plant, Unit No. 1, a boiling water nuclear reactor and associated equipment (the facility), owned by FirstEnergy Nuclear Generation Corp. (owner) and leased to Ohio Edison Company (lessee) (collectively the licensees).

The facility is located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio, and is described in the licensees' Final Safety Analysis Report, as supplemented and amended, and in the licensees' Environmental Report, as supplemented and amended.

- B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
- (1) FENOC, pursuant to Section 103 of the Act and 10 CFR Part 50, to possess, use, and operate the facility at the designated location in Lake County, Ohio, in accordance with the procedures and limitations set forth in this license;
 - (2) FirstEnergy Nuclear Generation Corp. and Ohio Edison Company, to possess the facility at the designated location in Lake County, Ohio, in accordance with the procedures and limitations set forth in this license;
 - (3) FENOC, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
 - (4) FENOC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use at any time any byproduct, source, and special nuclear material such as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and fission detectors in amounts as required;
 - (5) FENOC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction as to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
 - (6) FENOC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.
 - (7)(a) Ohio Edison Company is authorized to transfer any portion of its 30.0% ownership share of PNPP Unit 1 and a proportionate share of its interest in the PNPP common facilities to certain equity investors identified in its submission of January 23, 1987, as supplemented on March 3, 1987, and at the same time to lease back from such purchasers such interest sold in the PNPP Unit 1 facility. The term of the lease is for approximately 29½ years subject to a right of

renewal. Such sale and leaseback transactions are subject to the representations and conditions set forth in the above mentioned application of January 23, 1987, as supplemented on March 3, 1987, as well as the letter of the Director of the Office of Nuclear Reactor Regulation dated March 16, 1987, consenting to such transactions. Specifically, a lessor and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the licenses of PNPP Unit 1. For purposes of this condition the limitations of 10 CFR 50.81, as now in effect and as may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for PNPP Unit 1 remains in effect; these financial transactions shall have no effect on the license for the Perry Nuclear facility throughout the term of the license.

- (b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of these transactions; (ii) the PNPP Operating Agreement; (iii) the existing property insurance coverage for PNPP Unit 1; and (iv) any action by a lessor or others that may have an adverse effect on the safe operation of the facility.
- C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

FENOC is authorized to operate the facility at reactor core power levels not in excess of 3758 megawatts thermal (100% power) in accordance with the conditions specified herein.

(2) Technical Specifications

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. , are hereby incorporated into the license. FENOC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan

(3) Antitrust Conditions

- a. FirstEnergy Nuclear Generation Corp. and Ohio Edison Company

shall comply with the antitrust conditions delineated in Appendix C to this license; Appendix C is hereby incorporated into this license.

b. FENOC shall comply with the antitrust conditions delineated in Appendix C to this license as if named therein. 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 condition contained in the license.

(4) Deleted

(5) Deleted

(6) Fire Protection (Section 9.5, SER, SSER #1, 2, 3, 4, 7, and 8)

FENOC shall comply with the following requirements of the fire protection program: FENOC shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report, as amended, for the Perry Nuclear Power Plant and as approved in the Safety Evaluation Report (NUREG-0887) dated May 1982 and Supplement Nos. 1 through 10 thereto, subject to the following provisions:

a. FENOC may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

(7) Deleted

(8) Deleted

(9) Deleted

(10) Deleted

H. This license is effective as of the date of issuance and shall expire at midnight on March 18, 2026.

3. Based on the Commission's Order dated December 16, 2005 and conforming Amendment No. 137 dated December 16, 2005, regarding the direct transfer of the license from Pennsylvania Power Company, Ohio Edison Company, OES Nuclear, Inc., The Cleveland Electric Illuminating Company, and the Toledo Edison Company, to FirstEnergy Generation Corp. (FENGenCo), FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp. shall comply with the following conditions noted below:

- A. On the closing date(s) of the transfers to FENGenCo of their interests in Perry, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, OES Nuclear, Inc., and Toledo Edison Company shall transfer to FENGenCo all of each transferor's respective accumulated decommissioning funds for Perry, except for funds associated with the leased portions of Perry, and tender to FENGenCo additional amounts equal to remaining funds expected to be collected in 2005, as represented in the application dated June 1, 2005, but not yet collected by the time of closing. All of the funds shall be deposited in a separate external trust fund for the reactor in the same amount as received with respect to the unit to be segregated from other assets of FENGenCo and outside its administrative control, as required by NRC regulations, and FENGenCo shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of the order approving the transfer of the license and consistent with the safety evaluation supporting the order and in accordance with the requirements of 10CFR Section 50.75, "Reporting and recordkeeping for decommissioning planning."
- B. By the date of closing of the transfer of the ownership interests in Perry from Pennsylvania Power Company to FENGenCo, FENGenCo shall obtain a parent company guarantee from FirstEnergy in an initial amount of at least \$80 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interests. Required funding levels shall be recalculated annually and, as necessary, FENGenCo shall either obtain appropriate adjustments to the parent company guarantee or otherwise provide any additional decommissioning funding assurance necessary for FENGenCo to meet NRC requirements under 10 CFR 50.75.

- C. The Support Agreements described in the applications dated May 18, 2005 (up to \$80 million), and June 1, 2005 (up to \$400 million), shall be effective consistent with the representations contained in the applications. FENGenCo shall take no action to cause FirstEnergy, or its successors and assigns, to void, cancel, or modify the Support Agreements without the prior written consent of the NRC staff, except, however, the \$80 million Support Agreement in connection with the transfer of the Penn Power interests may be revoked or rescinded if and when the \$400 million support agreement described in the June 1, 2005, application becomes effective. FENGenCo shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than ten days after any funds are provided to FENGenCo by FirstEnergy under either Support Agreement.

FOR THE NUCLEAR REGULATORY COMMISSION

ORIGINAL SIGNED BY:

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Attachments/Appendices

1. Attachments 1 - 2
2. Appendix A - Technical Specifications
(NUREG -1204)
3. Appendix B - Environmental Protection
Plan
4. Appendix C - Antitrust Conditions

Date of Issuance: November 13, 1986

APPENDIX C

PERRY NUCLEAR POWER PLANT, UNIT NO. 1

NPF-58

ANTITRUST CONDITIONS

FOR

FIRSTENERGY NUCLEAR GENERATION CORP.
OHIO EDISON COMPANY

A. The licensees are subject to the following antitrust conditions:

Definitions

Applicants shall mean the two companies listed above.

Entity shall mean any electric generation and/or distribution system or municipality or cooperative with a statutory right or privilege to engage in either of these functions.

Wheeling shall mean transportation of electricity by a utility over its lines for another utility, including the receipt from and delivery to another system of like amounts but not necessarily the same energy. Federal Power Commission, The 1970 National Power Survey, Part 1, P. 1-24-8.

Licensing Conditions

- (1) Applicants shall not condition the sale or exchange of wholesale power or coordination services upon the condition that any other entity:
 - (a) enter into any agreement or understanding restricting the use of or alienation of such energy or services to any customers or territories;
 - (b) enter into any agreement or understanding requiring the receiving entity to, give up any other power supply alternatives or to deny itself any market opportunities;
 - (c) withdraw any petition to intervene or forego participation in any proceeding before the Nuclear Regulatory Commission or refrain from instigating or prosecuting any antitrust action in any other forum.