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December 31, 2007
L-07-510

Beaver Valley Power Station, Unit Nos. 1 and 2
Docket Nos. 50-334 and 50-412, License Nos. DPR-66 and NPF-73

Davis-Besse Nuclear Power Station, Unit No. 1
Docket No. 50-346, License No. NPF-3

Perry Nuclear Power Plant, Unit No. 1
Docket No. 50-440, License No. NPF-58

Ms. Cynthia A. Carpenter
Director, Office of Enforcement
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Actions Required by Confirmatory Order EA-07-199

By letter dated August 15, 2007, the Nuclear Regulatory Commission (NRC) issued a Confirmatory Order (Order) to the FirstEnergy Nuclear Operating Company (FENOC) to formalize commitments made by FENOC following the NRC issuance of a Demand for Information (DFI) on May 14, 2007. In addition to the commitments made by FENOC in response to the DFI in letters dated June 13, 2007, and July 16, 2007, the Order contains requirements to provide letters to the Director, NRC Office of Enforcement, prior to implementation and following completion of selected commitments.

The attachment to this letter provides an update on the status of the Order Items. The Order Items are considered to be complete, with the exception of Order Item 2, which requires external effectiveness reviews to be conducted in January 2008 and January 2009.

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There are no regulatory commitments contained in this letter. If there are questions, or additional information is required, please contact Mr. Gregory H. Halnon, Director- Fleet Regulatory Affairs, at 330-384-5638.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 31, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Stace", followed by a long horizontal line extending to the right.

Attachment:
Update on Status of Order Items

cc: Document Control Desk
Assistant General Counsel for Materials Litigation and Enforcement
Regional Administrator, NRC Region I
Regional Administrator, NRC Region III
NRC Project Manager – Davis-Besse and Perry
NRC Resident Inspector – Davis-Besse
NRC Project Manager – Beaver Valley
NRC Resident Inspector – Beaver Valley
NRC Resident Inspector – Perry Nuclear
Utility Radiological Safety Board
Mr. D. A. Allard, Director BRP/DEP
Mr. L. E. Ryan, BRP/DEP
Ms. N. Dragani, Ohio Emergency Management Agency

Update on Status of Order Items
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Order Item 1. The Licensee shall conduct regulatory sensitivity training for selected FENOC and non- FENOC FirstEnergy employees to ensure those employees identify and communicate information that has the potential for regulatory impact either at FENOC sites or within the nuclear industry to the NRC. At least 30 days prior to conducting the training, the Licensee shall submit by letter to the Director, NRC Office of Enforcement, a description of 1) the population to be trained, 2) the planned training methodology and materials, and 3) the training objectives. The Licensee shall complete its regulatory sensitivity training no later than November 30, 2007, and within 60 days following completion shall inform the Director, NRC Office of Enforcement, by letter.

The regulatory sensitivity training was described in letter number BV-L-07-128, DB-Serial Number 3370, PY-CEI/NRR-3066L, dated September 20, 2007. This training was completed on November 29, 2007.

This Order Item is considered to be complete.

Order Item 2. The Licensee shall conduct effectiveness reviews to determine if an appropriate level of regulatory sensitivity is evident among FirstEnergy employees including those who received regulatory sensitivity training. The first effectiveness review shall be conducted in January 2008 by an external consultant. A follow-up effectiveness review shall be conducted in January 2009. At least 45 days prior to starting each external effectiveness review, the Licensee shall inform, by letter, the Director, NRC Office of Enforcement, of the identity of its external consultant, the qualifications of its external consultant, and the scope and depth of its plan for assessing effectiveness. Within 60 days following completion of each external effectiveness review, the Licensee shall inform, by letter, the Director, NRC Office of Enforcement, of a summary of the results of the review and a description of any actions taken or planned in response to those results.

The plan for the external effectiveness review that will be conducted in January 2008 was described in letter number BV-L-07-138, DB-Serial Number 3378, PY-CEI/NRR-3067, dated November 26, 2007.

This Order Item remains open, pending the completion of the external effectiveness reviews that will be conducted in January 2008 and January 2009, and the submittal of a summary of the results of those reviews.

Order Item 3. The Licensee shall develop a formal process to review technical reports prepared as part of a commercial matter. The process shall provide criteria for the Licensee to use in determining whether a report has the potential for regulatory implications, or impact on nuclear safety either at FENOC sites or within the nuclear industry. The Licensee shall implement the process no later than December 14, 2007, and within 30 days following implementation shall submit a description of the process by letter to the Director, NRC Office of Enforcement.

A new policy, NOPL-LP-4003, Regulatory Sensitivity, was written to reiterate that FENOC, as a business unit of FirstEnergy, is affected in many ways by FirstEnergy decisions and activities. Some of these activities may have direct or indirect impact on matters regulated by the Nuclear Regulatory Commission. FENOC personnel must be alert to issues raised by non-FENOC FirstEnergy business units that may have potential safety, regulatory compliance, or communication implications. Such issues may be related to activities such as technical reports, decommissioning-related funding, antitrust matters, grid voltage and stability, and more.

When such outside activities or matters come to the attention of FENOC, whether by formal or informal means, FENOC personnel are directed to ensure that Regulatory Affairs is notified. Fleet Regulatory Affairs determines the potential regulatory impact, makes appropriate recommendations to FENOC and FirstEnergy management, and ensures compliance with applicable regulations.

Where such activities may have potential safety impact, or require specific action to comply with regulations and keep regulatory agencies informed, FENOC addresses them promptly in accordance with the appropriate FENOC policies, procedures, and guidance.

The formal process that implements this policy and includes the requirement and method to review technical reports prepared as part of a commercial matter is contained in a procedure (NOP-LP-4010, Regulatory Sensitivity Assessment) and a business practice (NOBP-LP-4013, Regulatory Impact Assessment Process). This formal process is described below:

FENOC personnel who become aware of activities and information that may have potential nuclear regulatory impact contact Regulatory Affairs personnel so an assessment of potential regulatory impact can be performed:

The following are examples that are assessed for nuclear regulatory impact:

- Any new information that might require FENOC to revise and/or supplement previous correspondence.
- Any new information that FirstEnergy Legal Department or other department outside of FENOC, may consider to have regulatory significance and request FENOC to review.
- Any information, exclusive of FENOC that deals or impacts the nuclear industry.
- Technical reports or other information prepared by a FirstEnergy business unit or agent of FirstEnergy which may relate to FENOC or the operation of its nuclear facilities; for example:
 - Decommissioning-related funding
 - Antitrust matters
 - Grid voltage and stability
- Any new information that might bear on the validity or completeness of the Statement of Facts attached to FENOC's January 19, 2006, Deferred Prosecution Agreement.

When a matter of interest is identified, an assessment to determine potential regulatory impact is performed using the following criteria:

- The Director - Fleet Regulatory Affairs, or designee, determines the extent of review necessary. The assessment considers the following questions:
 - Does the information have a material effect on any criteria or information presently being used to operate any FENOC nuclear facility?
 - Does the information have a material effect on any information that has been submitted in response to a Notice of Violation or other enforcement action?
 - Could this information significantly affect the NRC's understanding of regulated activities at FENOC?
 - If developed as part of litigation or other commercial business activity, does the information have regulatory sensitivity, significance or potential nuclear safety ramifications?
 - Should the NRC or the Industry be informed of the information, and if so, in what manner (formal, informal, etc.)?

- Recommendations are reviewed with the Director – Fleet Regulatory Affairs, or designee. The documented recommendation considers the following:
 - No actions by FENOC are necessary (proceed with the activity as desired.)
 - FENOC comments, and obtains alignment on resolution of comments (this could possibly slow the activity).
 - FENOC has significant comments (this may stop or delay the activity until resolution).
 - FENOC analysis finds this activity is contrary to regulatory positions (the activity must be stopped).
 - Appropriate feedback to the author or responsible organization for the item being assessed.
 - Appropriate communications to regulatory agencies, including the timeliness, management level at which the communications should occur, and the level of formality (i.e., written, telephone call, etc.).
- A peer reviewer reviews the assessment.
- The Director – Fleet Regulatory Affairs, or designee, reviews and approves the assessment and recommendations.
- Upon approval, the following steps are taken:
 - Any necessary actions are documented within the appropriate management tracking system, depending on the significance of the item being reviewed.
 - Any required action items are completed.
 - Appropriate engagement of NRC (if determined necessary).
 - FENOC concerns are addressed prior to issuing document.

This Order Item is considered to be complete.

Order Item 4. The Licensee shall assess its Regulatory Communications policy and make process changes to its NRC Correspondence procedure to ensure specific questions are asked during the process relative to the experience gained from efforts to respond to the NRC's May 14, 2007, Demand for Information. The Licensee shall complete any revisions to its NRC Correspondence procedure or Regulatory Communications policy no later than December 14, 2007, and within 30 days following completion shall submit a description of the policy and procedure changes, if any, or the basis for the determination that such revisions were not necessary, by letter to the Director, NRC Office of Enforcement.

FENOC Policy NOPL-LP-4002, Regulatory Communications, was revised to state that any relevant technical or commercial information with the potential for safety,

compliance or regulatory interest should be evaluated to determine the need for proactive communication to appropriate regulatory agencies.

Procedure NOP-LP-4007, Regulatory Agency Communications, establishes the responsibilities and requirements for communications with regulatory agencies, including the NRC. The procedure changes included a title change from "NRC Correspondence Review and Approval Process" to "Regulatory Agency Communications." The process changes include requirements to ensure there is a sufficient understanding of the request when responding to a Request for Additional Information from the NRC and to ensure that the correspondence is responsive to the NRC's questions. The process changes also ensure that specific questions are asked during the process through the development of a Regulatory Correspondence Checklist. This checklist includes a series of questions that were developed to focus attention on the information that the NRC is requesting.

The peer reviewer determines the following:

- If the letter is in response to NRC questions or requests, there is a clear tie between the question or request and the response.
- If the letter is in response to NRC questions or requests, each question or request is completely and clearly answered in the response (i.e., all questions have been satisfactorily addressed).
- Submittal does not contain information that has a material effect on information previously submitted to the NRC in response to a Notice of Violation or other enforcement action (e.g., Davis-Besse head event) or may significantly affect the NRC's understanding of plant activities. If it does, expedited communication paths with the NRC have been determined.

The cognizant Manager determines the following:

- The correspondence has been reviewed for regulatory commitments, licensing positions, prudence, appropriate wording, and potential regulatory impact.
- If the letter is in response to NRC questions or requests, there is a clear and complete response to each question or request and all questions have been satisfactorily addressed.

This Order Item is considered to be complete.

Order Item 5. The Licensee shall provide an Operating Experience (OE) document to the nuclear industry through the industry's established OE process. The document shall discuss the issues surrounding the NRC's May 14, 2007, Demand for Information, including the review of technical reports prepared as part of a commercial matter. The OE document shall be provided to the nuclear industry, and to the Director, NRC Office of Enforcement, within 30 days of the date of this Order.

The Operating Experience document was provided to the nuclear industry on August 10, 2007: It was provided to the Director, NRC Office of Enforcement, in letter number BV-L-07-121, DB-Serial Number 3365, PY-CEVNR-3062L, dated September 13, 2007.

This Order Item is considered to be complete.

Order Item 6. The Licensee shall complete a root cause evaluation of the events that culminated in the issuance of the NRC's May 14, 2007, Demand for Information. The licensee shall make the root cause evaluation available for review by NRC inspectors and summarize the results of the evaluation in a letter to the Director, NRC Office of Enforcement, no later than December 14, 2007. The Licensee's letter to the NRC shall document the results of an assessment as to whether the results of the root cause evaluation reflect a need for any corrective actions different from or in addition to the requirements of this Confirmatory Order.

The root cause evaluation has been completed and a summary of the results was provided in letter number BV-L-07-138, DB-Serial Number 3378, PY-CEI/NRR-3067, dated November 26, 2007. This summary included the additional corrective actions that were identified by the root cause evaluation team.

This Order Item is considered to be complete.

Order Item 7. The Licensee shall maintain the interim corrective actions, discussed, in part, in Section II of this Order and implemented as a result of the events leading up to the issuance of the NRC's May 14, 2007, DFI, until the procedural changes described in paragraphs 3 and 4 of Section IV of this Confirmatory Order are implemented.

With the completion of Order Items 3 and 4, as discussed above, the interim corrective actions are no longer in effect.

This Order Item is considered to be complete.