

June 18, 2013  
L-13-198

10 CFR 72.30(b)

ATTN: Document Control Desk  
Director, Division of Spent Fuel Storage and Transportation  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT:**

Davis-Besse Nuclear Power Station, Unit No. 1 ISFSI  
Docket No. 72-14

Perry Nuclear Power Plant, Unit No. 1 ISFSI  
Docket No. 72-69

Amended and Restated Parental Guaranty for Independent Spent Fuel Storage  
Installation

By letter dated December 17, 2012 [Agencywide Documents Access and Management System (ADAMS) Accession No. ML12352A194], FirstEnergy Nuclear Operating Company (FENOC) submitted to the Nuclear Regulatory Commission (NRC) a parental guaranty to provide \$11 million of financial assurance for the decommissioning of the Davis-Besse Nuclear Power Station, Unit No. 1, Independent Spent Fuel Storage Installation (Davis-Besse ISFSI) and the Perry Nuclear Power Plant, Unit No. 1, Independent Spent Fuel Storage Installation (Perry ISFSI).

By letter dated March 28, 2013 (ADAMS Accession No. ML13086A244), NRC staff requested additional information to complete its review of the parental guaranty providing financial assurance for the decommissioning of the Beaver Valley Power Station, Unit No. 1, and the Perry Nuclear Power Plant. In response to this request for additional information, FENOC is amending and restating that parental guaranty. As a result, FENOC is making similar changes to the \$11 million parental guaranty providing financial assurance for the Davis-Besse ISFSI and the Perry ISFSI.

The existing \$11 million parental guaranty took effect on December 17, 2012 (ADAMS Accession No. ML12352A194). Under the terms of Section 14 of the existing parental guaranty, FENOC hereby provides the enclosed amended and restated parental

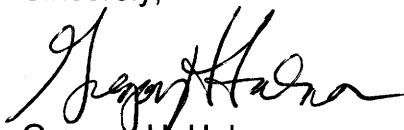
Davis-Besse Nuclear Power Station, Unit No. 1 ISFSI  
Perry Nuclear Power Plant, Unit No. 1 ISFSI  
L-13-198  
Page 2

guaranty. The amended and restated \$11 million parental guaranty replaces the existing \$11 million parental guaranty. The amended and restated \$11 million parental guaranty will come into force effective 30 days after this written notice to the NRC.

A certification that FirstEnergy Corp. (FE) meets the applicable financial test requirements for issuing a parental guaranty was provided as an enclosure to a letter dated March 29, 2013 (ADAMS Accession No. ML13091A057). The financial test was conducted based on FE's 2012 audited annual financial results, and these are the most recent audited annual financial results that are available.

There are no regulatory commitments contained in this letter. If there are any questions or if additional information is required, please contact Mr. Thomas A. Lentz, Manager – Fleet Licensing, at 330-315-6810.

Sincerely,



Gregory H. Halnon  
Director, Fleet Regulatory Affairs

Enclosure:  
Amended and Restated Parental Guaranty

cc: NRC Region III Administrator  
NRC Resident Inspector (Davis-Besse Nuclear Power Station, Unit No. 1)  
NRC Resident Inspector (Perry Nuclear Power Plant, Unit No. 1)  
NRR Project Manager (Davis-Besse Nuclear Power Station, Unit No. 1)  
NRR Project Manager (Perry Nuclear Power Plant, Unit No. 1)  
Utility Radiological Safety Board (w/o Enclosure)

Enclosure  
L-13-198

Amended and Restated Parental Guaranty  
(7 pages follow)

## AMENDED AND RESTATED PARENTAL GUARANTY

GUARANTY, dated as of June 11, 2013, made by FirstEnergy Corp., an Ohio corporation (the "Guarantor") to Guarantor's wholly owned subsidiaries, FirstEnergy Nuclear Generation, LLC ("FENGenCo") and The Ohio Edison Company ("OE").

### W I T N E S S E T H :

WHEREAS, FENGenCo is an indirect, wholly owned subsidiary of the Guarantor and has a 100% undivided ownership interest in Davis-Besse Nuclear Power Station ("Davis-Besse") and 87.42 % of the undivided ownership of the Perry Nuclear Power Plant ("Perry") both of which have independent spent fuel storage installations ("ISFSIs") onsite for the storage of spent nuclear fuel;

WHEREAS, OE is a wholly owned subsidiary of the Guarantor, and OE leases and is licensed to possess a 12.58% undivided ownership of the Perry, which has an ISFSI onsite for the storage of spent nuclear fuel;

WHEREAS, the U.S. Nuclear Regulatory Commission ("NRC") has promulgated regulations in Title 10, Chapter 1 of the Code of Federal Regulations ("CFR"), Part 72 which require that a holder of, or an applicant for, a license issued pursuant to 10 CFR Part 72 provide assurance that funds will be available when needed for required decommissioning activities;

WHEREAS, the Guarantor receives substantial indirect benefits from owning its direct and indirect subsidiaries, OE and FENGenCo (which benefits are hereby acknowledged), and accordingly, desires to execute and deliver this Guaranty in order to provide financial assurance for FENGenCo's obligations for the decommissioning of the Davis-Besse and Perry ISFSIs and for OE's obligations for the decommissioning of the Perry ISFSI, as required by 10 CFR Part 72; and

WHEREAS, this Amended and Restated Parental Guaranty amends and replaces the \$11 million Parental Guaranty dated December 17, 2012.

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to the Guarantor, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby makes the following representations and warranties to FENGenCo and OE, and Guarantor hereby covenants and agrees as follows:

1. The Guarantor has full authority and capacity to enter into this Guaranty under its bylaws, articles of incorporation, and the laws of the State of Ohio, its state of incorporation. Guarantor has approval from its Board of Directors to enter into this guaranty.
2. This guaranty is being issued so that FENGenCo and OE will be in compliance with regulations issued by the NRC, an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974. The NRC has promulgated regulations in Title 10, Chapter I of the Code of Federal Regulations, Part 72, which require that a holder of, or an applicant for, a license issued pursuant to 10 CFR Part 72 provide assurance that funds will be available when needed for required decommissioning activities.

3. This guaranty is issued to provide financial assurance for decommissioning activities for the Davis-Besse ISFSI, Docket No. 72-14 and the Perry ISFSI, Docket No. 72-69, as required by 10 CFR Part 72. The decommissioning costs for the Davis-Besse and Perry ISFSIs are guaranteed in the amount of \$11 million.
4. The Guarantor will meet or exceed the criteria from Financial Test II.A.2 from 10 CFR Par 30, Appendix A and agrees to notify FENGenCo, OE and the NRC of any changes in its ability to meet the Appendix A criteria in compliance with the notification requirements as specified in 10 CFR Part 72. Specifically, the Guarantor will possess:
  - (a)(i) A current rating of its most recent uninsured, uncollateralized, and unencumbered bond issuance of BBB- or higher as issued by Standard and Poor's, or Baa3 or higher as rated by Moody's; and
  - (ii) Tangible net worth is at least \$21 million and total net worth of at least six times the amount of decommissioning funds being assured by this guarantee; and
  - (iii) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current decommissioning cost or Guaranty amount.
5. The Guarantor has an indirect majority control of the voting stock of FENGenCo and a direct majority control of the voting stock of OE. FENGenCo and OE are located at 76 South Main Street, Akron, Ohio 44308. FENGenCo owns the Davis-Besse facility and has an 87.42 % interest in the Perry facility. OE has a 12.58 % interest in the Perry facility
6. The term "decommissioning activities" as used herein refers to the activities required by 10 CFR Part 72 for decommissioning of the facilities identified above.
7. The Nuclear Decommissioning Master Trust Agreement, entered into with Mellon Bank, N.A. (now, Bank of New York Mellon, a New York state bank having trust powers) on December 1, 2005, was established to maintain funds for decommissioning. This master trust agreement establishes the FE Davis-Besse Nonqualified Fund and the FE Perry Nonqualified Fund, which will serve as the "standby trusts" contemplated by the NRC's regulations for payment of funds under this Guaranty.
8. For value received from FENGenCo and from OE and pursuant to the authority conferred upon the Guarantor, the Guarantor guarantees that if FENGenCo or OE fails to perform the required decommissioning activities due to lack of funds, the Guarantor shall:
  - (a) provide all funds necessary, up to the amount of this Guaranty to carry out the required activities; or
  - (b) pay into the existing trust fund referenced in Paragraph 7 the amount of this guaranty for these activities. The Guarantor will instruct the trustee to maintain the funds for the ISFSI in a separate subaccount from funds for general decommissioning activities.
9. The Guarantor agrees to submit revised financial statements, financial test data, and a special auditor's report and reconciling schedule to the NRC annually within 90 days of the close of the parent Guarantor's fiscal year.

10. The Guarantor, FENGenCo and OE agree that if the Guarantor fails to meet the financial test criteria at any time after this Guaranty is established, the Guarantor, FENGenCo, and OE shall send, within 90 days of the end of the fiscal year in which the Guarantor fails to meet the financial test criteria, written notice to the NRC using NRC's electronic information exchange. Such written notice also should be made by FENGenCo and OE within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the Guarantor no longer passes the test. If FENGenCo or OE fails to provide alternative financial assurance as specified in 10 CFR Part 72, as applicable, which must be submitted to NRC within 120 days of the end of such fiscal year or upon making notice that the Guarantor no longer passes the test, and obtain written approval of such assurance from the NRC within 60 days of the submittal, the Guarantor shall provide such alternative financial assurance in the name of FENGenCo and/or OE, or make full payment under the Guaranty to the existing standby trust(s) established by FENGenCo and/or OE.
11. Independent of any notification under paragraph 8 above, if the NRC determines for any reason that the Guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a Guarantor for the facilities the Guarantor agrees that within 90 days after being notified by the NRC of such determination, an alternative financial assurance mechanism as specified in 10 CFR Part 72 as applicable, shall be established by the Guarantor in the name of FENGenCo and/or OE unless FENGenCo and/or OE has done so.
12. The Guarantor as well as its successors and assigns shall remain bound jointly and severally under this Guaranty notwithstanding any or all of the following: amendment or modification of license or NRC-approved decommissioning funding plan for that facility, the extension or reduction of the time of performance of required activities, or any other modification or alteration of an obligation of FENGenCo or of OE pursuant to 10 CFR Part 72.
13. The Guarantor agrees that it will be liable for all litigation costs incurred by FENGenCo, OE, or the NRC in any successful effort to enforce the agreement against the Guarantor.
14. The Guarantor agrees to remain bound under this Guaranty and financial test provisions for the previously listed facilities until the Commission has terminated the licenses, accepted in writing the parent company's alternate financial assurances, or accepted in writing the licensee's financial assurance, except that this Guaranty may be amended by the agreement of Guarantor, FENGenCo and OE with 30 days prior written notice to the NRC, and except that the Guarantor may cancel this Guaranty by sending written notice to the NRC using NRC's electronic information exchange, such cancellation to become effective no earlier than 120 days after receipt of such notice by NRC, as evidenced by the return receipts. Guarantor shall also notify FENGenCo and OE. If FENGenCo and/or OE fails to provide alternative financial assurance as specified in 10 CFR Part 72, as applicable, and obtain written approval of such assurance within 120 days after the sending of the above notice by the Guarantor, the Guarantor shall provide such alternative financial assurance, or make full payment under the Guaranty to the existing standby trust established by FENGenCo and/or OE.
15. The Guarantor expressly waives notice of acceptance of this Guaranty by the NRC or by FENGenCo or by OE. The Guarantor also expressly waives notice of amendments or

modification of the decommissioning requirements and of amendments or modifications of the licenses.

16. The Guarantor files financial reports with the U.S. Securities and Exchange Commission (SEC), which are available to NRC and need not be submitted separately in accordance with 10 CFR 72.80(b).
17. The Guarantor agrees that if the Guarantor admits in writing its inability to pay its debts generally, or makes a general assignment for the benefit of creditors, or any proceeding is instituted by or against the Guarantor seeking to adjudicate it as bankrupt or insolvent, or seeking dissolution, liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official for the Guarantor or for any substantial part of its property, or the Guarantor takes any action to authorize or effect any of the actions stated in the paragraph, the Commission may:
  - (a) declare that the financial assurance guaranteed by the this Guaranty is immediately due and payable to the existing trust referenced in Paragraph 7, without diligence, presentment, demand, protest, or any other notice of any kind, all of which are expressly waived by Guarantor; or
  - (b) exercise any and all of its other rights under applicable law.
18. The Guarantor agrees to notify the NRC, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code, or the occurrence of any other event listed in Paragraph 17, by or against:
  - (a) the Guarantor;
  - (b) FENGenCo;
  - (c) OE;
  - (d) an entity (as that term is defined in 11 U.S.C. 101(15)) controlling FENGenCo or OE or listing the licenses, FENGenCo or OE as property of the estate; or
  - (e) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of FENGenCo or OE.
19. The notification required by Paragraph 18 must include the following:
  - (a) a description of the event, including major creditors, the amounts involved, and the actions taken to assure that the amount of funds guaranteed by this Guaranty for decommissioning will be transferred to the existing trust referenced in Paragraph 7 as soon as possible;
  - (b) if a petition of bankruptcy was filed, the identity of the bankruptcy court in which the petition for bankruptcy was filed; and

(c) the date of filing of any petitions.

20. This Guaranty and the rights and obligations of the FENGenCo, OE, and the Guarantor hereunder, shall be governed by and construed in accordance with the domestic laws of the State of Ohio without giving effect to any choice or conflict-of-law provision or rule (whether of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Ohio. The Guarantor, FENGenCo, and OE each consent to the exclusive jurisdiction and venue of any state or federal court within the State of Ohio for adjudication of any suit, claim, action or other proceeding at law or in equity relating to this Guaranty, or to any transaction contemplated hereby. The Guarantor, FENGenCo, and OE each accept, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waive any objection as to venue, and any defense of *forum non conveniens*. The Guarantor hereby irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Guarantor at its address set forth opposite its signature below, such service to become effective 30 days after such mailing. Nothing herein shall affect the right of FENGenCo or OE to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Guarantor in any other jurisdiction. The Guarantor hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with the Guaranty brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.
21. All notices and other communications hereunder shall be made to FirstEnergy Corp.'s Chief Financial Officer and General Counsel at 76 South Main Street, Akron, Ohio 44308.
22. This Amended and Restated Parental Guaranty shall amend and replace the existing \$11 million Parental Guaranty dated December 17, 2012. This Amended and Restated Parental Guaranty shall be effective 30 days after receipt by the NRC of written notice of these amendments, unless a written notice of objection by NRC is received within such 30 days.



I hereby certify that this Guaranty is true and correct to the best of my knowledge.

Effective date: \_\_\_\_\_

FirstEnergy Corp.

By Steven R. Staub

Steven R. Staub  
Vice President & Treasurer

STATE OF OHIO  
COUNTY OF SUMMIT

Subscribed and sworn to me, a Notary Public, in and for the City/County and State above named, this 11 th day of June, 2013.

**SAMANTHA B. SARAH**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Summit County  
My commission expires Dec. 21, 2014

Samantha B Sarah

My Commission Expires: Dec. 21, 2014

FirstEnergy Nuclear Generation, LLC

By R S Ferguson  
Rhonda S. Ferguson  
Vice President & Corporate Secretary

STATE OF OHIO  
COUNTY OF SUMMIT

Subscribed and sworn to me, a Notary Public, in and for the City/County and State above named, this 11 th day of June, 2013.

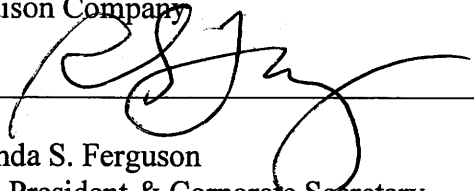
**SAMANTHA B. SARAH**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Summit County  
My commission expires Dec. 21, 2014

Samantha B Sarah

My Commission Expires: Dec. 21, 2014

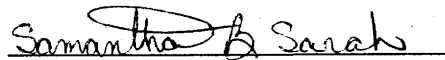
Ohio Edison Company

By \_\_\_\_\_

  
Rhonda S. Ferguson  
Vice President & Corporate Secretary

STATE OF OHIO  
COUNTY OF SUMMIT

Subscribed and sworn to me, a Notary Public, in and for the City/County and State above named, this 11 th day of June, 2013.

  
Samantha B. Sarah

**SAMANTHA B. SARAH**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Summit County  
My commission expires Dec. 21, 2014

My Commission Expires: Dec. 21, 2014