

NUCLEAR REGULATORY COMMISSION

[EA-14-094; NRC-2014-0162]

In the Matter of FirstEnergy Nuclear Operating Co.

(Davis-Besse Nuclear Power Station, Unit 1)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to revise the Davis-Besse National Fire Protection Association (NFPA) 805 License Amendment Request submittal date of July 1, 2014 to December 31, 2015. This new submittal date extends enforcement discretion until December 31, 2015, and supports FirstEnergy Nuclear Operating Company's (the licensee) continued progress in activities related to the transition to NFPA 805.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID **NRC-2014-0162** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0162**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at

[http:// www.nrc.gov/reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-2872, e-mail: Gerald.Gulla@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 30th day of June 2014.

For the Nuclear Regulatory Commission

/RA/

Patricia K. Holahan, Acting Director
Office of Enforcement

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

[NRC-2014-0162]

In the Matter of)	
)	Docket No. 50-346
FirstEnergy Nuclear Operating Co.)	License No. NPF-3
(Davis-Besse Nuclear Power Station,)	
Unit No. 1))	EA-14-094

Confirmatory Order Modifying License

I

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NPF-3 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities,” on April 22, 1977. The license authorizes the operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse, facility), in accordance with conditions specified therein. The facility is located on the licensee’s site in Oak Harbor, Ohio.

II

On February 27, 2007, FENOC notified the NRC of its intent to adopt National Fire Protection Association (NFPA) Standard 805, “Performance Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition,” at Davis-Besse in accordance with 10 CFR 50.48(c). In this February letter, FENOC committed to commence its transition to the performance-based standard on March 1, 2007, and submit its license amendment request (LAR) three years after the transition start date, which would be March 1, 2010. Under this

initiative, the NRC has exercised enforcement discretion for most fire protection noncompliances identified during the licensee's transition to NFPA 805, and for certain existing identified noncompliances that may reasonably be resolved at the completion of transition.

The alternative fire protection rule NFPA 805, as adopted in 10 CFR 50.48(c), is one path to resolving longstanding fire protection issues. To receive this enforcement discretion for fire protection noncompliances during transition, the licensee must meet the specific criteria, as stated in Section 9.1, "Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)," of the NRC Enforcement Policy (Policy), and submit an acceptable license amendment application by the date, as specified in the licensee's commitment letter.

III

On September 10, 2008, the NRC revised Section 9.1 of the Policy to allow licensees to take advantage of the lessons learned from the NFPA 805 pilot plants (73 FR 52705). This revision offered licensees transitioning to NFPA 805 the option to request an extension to their NFPA 805 enforcement discretion to six months after the NRC approved the second pilot plant LAR, given that the requesting plant had made substantial progress in their transition effort. By letter dated January 14, 2010, FENOC requested this extension for Davis-Besse and on March 23, 2010, the NRC granted it (Agencywide Documents Access and Management System (ADAMS) Accession Nos.; ML100191803 and ML100670111, respectively). Accordingly, Davis-Besse, along with other licensees who requested and were granted this extension, had their LAR submittal date extended.

On December 29, 2010, the NRC approved the second pilot plant's license amendment, thereby establishing June 29, 2011, as the expiration date for the enforcement discretion period for about 25 licensees, including Davis-Besse. In an effort to manage this high number of submittals and for the convenience of the staff, the NRC revised the Policy (76 FR 40777) to

extend enforcement discretion to allow for the staggered submittal of licensee LARs. To receive this extension, licensees were required to submit a letter to the NRC by June 29, 2011, acknowledging a new LAR submittal commitment date. Accordingly, on June 29, 2011, FENOC submitted their request to submit their LAR for Davis-Besse on or before July 1, 2014 (ADAMS Accession No. ML111800765). On August 1, 2011, the NRC approved their request to extend enforcement discretion (ADAMS Accession No. ML112010151).

In a public meeting held on November 13, 2013, between the NRC and FENOC, the licensee described its progress for transitioning Davis-Besse to NFPA 805. FENOC also informed the NRC that an extension of the schedule for LAR submittal is under consideration to allow appropriate coordination of design modifications that are risk beneficial. In a letter dated April 1, 2014, FENOC expressed a desire to continue enforcement discretion, and a willingness to commit to a new submittal date of December 31, 2015 (ADAMS Accession No. ML14091A453). In accordance with SECY-12-0031, "Enforcement Alternatives for Sites that Indicated Additional Time Required to Submit Their License Amendment Requests to Transition to 10 CFR 50.48(c) National Fire Protection Association Standard 805," enforcement discretion may be extended, via a confirmatory order, if a licensee provides adequate justification.

In the April and subsequent May 29, 2014 (ADAMS Accession No. ML14149A545) letters, FENOC provided the justification for revising the LAR submittal date. The extension is necessary to incorporate plant modifications that were identified in response to the mitigation strategies for the beyond design basis external events. The extension request is necessary to incorporate these modifications into the PRA that support the NFPA 805 transition and the NFPA 805 LAR, with sufficient technical information for the NRC staff to complete the detailed technical review. In addition; the staff reviewed the letters provided and a schedule of the major project milestones for the development and submission of incorporation of these modifications into the PRA, and the LAR submittal to the staff.

Therefore, the NRC has determined that the Davis-Besse NFPA 805 enforcement discretion along with the LAR submittal date should be extended. This Order is being issued to revise the Davis-Besse NFPA 805 LAR submittal date of July 1, 2014 to December 31, 2015. This new submittal date supports FENOC's continued progress in activities related to the transition to NFPA 805, as described in their letters dated April 1, and May 29, 2014.

FENOC may, at any time, cease its transition to NFPA 805 and comply with Davis-Besse's existing licensing basis and the regulations set forth in 10 CFR 50.48, as applicable. As indicated in the Enforcement Policy, if FENOC decides not to complete the transition to 10 CFR 50.48(c), it must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). If FENOC fails to meet the new LAR submittal date and fails to comply with its existing licensing basis, the NRC will take appropriate enforcement action, consistent with its Enforcement Policy.

On June 25, 2014, FENOC consented to issuing this Order, as described in Section V below. FENOC further agreed that this Order will be effective upon issuance and that it has waived its rights to a hearing.

IV

Based on the licensee's current status, scheduled key activities, and planned modifications, the NRC has determined that the licensee has provided adequate justification for its commitment given in Section V, and, thus, for the extension of enforcement discretion. Because the licensee will continue to perform modifications to reduce current fire risk in parallel with the development of its NFPA 805 LAR, the staff finds this acceptable to ensure public health and safety. Based on the above and FENOC's consent, this Order is effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, "Orders," IT IS HEREBY ORDERED THAT LICENSE NO. NPF-3 IS MODIFIED AS FOLLOWS:

- A. FENOC will submit an acceptable license amendment request for Davis-Besse Nuclear Power Station, Unit 1, to adopt NFPA Standard 805 by no later than December 31, 2015.
- B. FENOC will continue to receive enforcement discretion until December 31, 2015. If the NRC finds that the license amendment request is not acceptable, the NRC will take steps consistent with the Enforcement Policy.

The Director of the Office of Enforcement, in consultation with the Director of the Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days from the date of this Order. In addition, any other person adversely affected by this Order may request a hearing on this Order within 30 days from the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause

for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements

for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for

and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll free call at 1- 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not

to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For The Nuclear Regulatory Commission

Dated at Rockville, Maryland this 30th of June 2014.

/RA/

Patricia K. Holahan, Acting Director
Office of Enforcement