



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

April 15, 2016

Mr. Paul A. Harden
Senior Vice President and
Chief Operating Officer
FirstEnergy Nuclear Operating Company
76 South Main Street
Akron, OH 44308

SUBJECT: ORDER APPROVING DIRECT TRANSFER OF LICENSE AND CONFORMING
AMENDMENT RELATED TO PERRY NUCLEAR POWER PLANT, UNIT 1
(CAC NO. MF6412)

Dear Mr. Harden:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated June 30, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15181A366), as supplemented by letter dated January 18, 2016 (ADAMS Accession No. ML16018A003), requesting consent to the transfer of the leased interests in Perry Nuclear Power Plant, Unit 1, from the Ohio Edison Company to FirstEnergy Nuclear Generation, LLC.

The enclosed order approves the proposed direct ownership transfer pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* and subject to the conditions described within those sections. The order also approves the enclosed conforming license amendment, which will be issued and made effective at the time the transfer is completed.

Enclosure 2 is the NRC staff's safety evaluation (SE) related to the preceding actions. The SE will be placed in the NRC public document room and added to the ADAMS public library.

P. Harden

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The order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly J. Green". The signature is written in a cursive style with a large, prominent initial "K".

Kimberly J. Green
Senior Project Manager
Plant Licensing Branch III-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosures:

1. Order
2. Safety Evaluation
3. Conforming Amendment to NPF-58

cc w/encls.: Distribution via ListServ

ENCLOSURE 1

ORDER APPROVING APPLICATION REGARDING
THE DIRECT TRANSFER OF LICENSE FOR
PERRY NUCLEAR POWER PLANT, UNIT 1
RESULTING FROM TRANSFER OF OWNERSHIP INTERESTS FROM
THE OHIO EDISON COMPANY TO FIRSTENERGY NUCLEAR GENERATION, LLC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
)	
FIRSTENERGY NUCLEAR OPERATING COMPANY)	Docket No. 50-440
)	
FIRSTENERGY NUCLEAR GENERATION, LLC)	License No. NPF-58
)	
OHIO EDISON COMPANY)	
)	
Perry Nuclear Power Plant, Unit 1)	

ORDER APPROVING DIRECT TRANSFER OF LICENSE AND APPROVING
CONFORMING AMENDMENT

I.

FirstEnergy Nuclear Operating Company (FENOC), FirstEnergy Nuclear Generation, LLC (FENGen), and the Ohio Edison Company (OE) are the licensees of Perry Nuclear Power Plant, Unit 1 (PNPP). FENOC acts as agent for itself and the other licensees and has exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP, Unit 1, as reflected in Facility Operating License NPF-58. The facility is located on the shore of Lake Erie in Lake County, Ohio.

II.

By application dated June 30, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15181A366), as supplemented by letter dated January 18, 2016 (ADAMS Accession No. ML16018A003), FENOC, acting as agent for and on behalf of FENGen and OE, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR)

50.80, "Transfer of licenses," requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of leased interests in Facility Operating License No. NPF-58 from OE to FENGen. The application is in connection with the expiration of OE's lease of 12.58-percent interest in PNPP, which expires at midnight on May 30, 2016, and the related transfer of the leased interests to FENGen.

Supplemental information was provided by letter dated January 18, 2016 (hereinafter, the June 30, 2015, application and the January 18, 2016, supplemental information will be referred to collectively as the "application"). FENOC also requested approval of a conforming license amendment that would delete references to OE in the license to reflect the transfer of the leased interest. No physical changes to the facilities or operational changes were proposed in the application. After completion of the proposed transfer, FENGen and FENOC will be the owner and operator, respectively, of the facility.

Approval of the transfer of the facility operating license and conforming license amendment was requested by the applicant pursuant to 10 CFR 50.80 and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." A notice entitled "Consideration of Approval of Transfer of License and Conforming Amendment," was published in the *Federal Register* on September 16, 2015 (80 FR 55656), as corrected on September 29, 2015 (80 FR 58508). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC shall give its consent in writing. Upon review of the information in the licensee's application, and other information before the Commission, the NRC staff has determined that FENGen is qualified to hold the ownership interests in the facility previously held by OE, and FENOC is qualified to hold the operating authority under the license, and that the transfer of ownership interests in the facility to FENGen, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the condition set

forth below. The NRC staff has further found that the application for the proposed license amendment complies 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; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by an NRC safety evaluation dated April 15, 2016.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Act; 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed direct transfer of the license is approved, subject to the following condition:

FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation, LLC, shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation, that as of the date of license transfer, the licensees reflected in the amended license have obtained the appropriate amount of insurance required by 10 CFR Part 140 and 10 CFR 50.54(w).

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 3 to the cover letter forwarding

this order, to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer action is completed.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed direct transfer action, FENOC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 1 business day prior to the date of the closing of the direct transfer. Should the proposed transfer of the license not be completed within 1 year of this order's date of issue, this order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This order is effective upon issuance.

For further details with respect to this order, see the initial application dated June 30, 2015, as supplemented by letter dated January 18, 2016, and the safety evaluation dated the same date as this order (ADAMS Accession No. ML16078A092), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O-1 F21 (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail at pdr_resource@nrc.gov.

Dated at Rockville, Maryland, this 15th day of April 2016.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read 'W. M. Dean', with a long horizontal flourish extending to the right.

William M. Dean, Director
Office of Nuclear Reactor Regulation



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR DIRECT TRANSFER OF LEASED INTEREST FROM THE OHIO EDISON COMPANY
TO FIRSTENERGY NUCLEAR GENERATION, LLC
FACILITY OPERATING LICENSE NO. NPF-58
PERRY NUCLEAR POWER PLANT, UNIT NO. 1
DOCKET NO. 50-440

1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA or the Act), and Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80 ("Transfer of licenses"), FirstEnergy Nuclear Operating Company (FENOC), acting as agent for and on behalf of FirstEnergy Nuclear Generation, LLC (FENGen) and the Ohio Edison Company (OE), requested approval by the U.S. Nuclear Regulatory Commission (NRC) for the direct transfer of 12.58-percent leased interest in the Perry Nuclear Power Plant, Unit 1 (PNPP) from OE to FENGen. FENOC submitted the request by application dated June 30, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15181A366), as supplemented by letter dated January 18, 2016 (ADAMS Accession No. ML16018A003) ("the application"). The supplemental letter dated January 18, 2016, provided additional information that clarified the application and did not expand the scope of the application as originally noticed in the *Federal Register* on September 16, 2015 (80 FR 55656).

Pursuant to 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit," FENOC also requested NRC approval of a conforming amendment for the Facility Operating License, NPF-58, to reflect the proposed transfer, to be issued and made effective May 31, 2016, at the time the transfer is completed.

FENGen and OE are the owners of PNPP and an independent spent fuel storage installation licensed under a general license pursuant to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," located in Lake County, Ohio.

2.0 BACKGROUND

FENGen is currently licensed to possess 87.42 percent of PNPP. This application seeks to transfer the remaining interest in PNPP held by OE to FENGen. FENGen will own 100 percent of PNPP, and FENOC will continue to operate PNPP. This application also includes the required financial and other information to support its approval by the NRC.

According to the applicant, FENGen is a direct, wholly owned subsidiary of FirstEnergy Solutions Corporation (FES), which, in turn, is a direct, wholly owned subsidiary of FirstEnergy Corporation (FE). FE's electric utility operating companies form one of the Nation's largest investor-owned electric systems, with over 6 million customers served within a nearly 65,000-square-mile area of Ohio, Pennsylvania, New Jersey, West Virginia, Maryland, and New York. Its generation subsidiaries operate nearly 18,000 megawatts of capacity. In 2014, FE had revenues exceeding \$15 billion and net income of approximately \$300 million.

As part of corporate restructurings in 2005 and 2006, FE established FES as its affiliate responsible for the purchase and sale of electricity in competitive markets. FirstEnergy Generation Corp. (Fossil GenCo), a wholly owned subsidiary of FES, was created to own and operate the fossil and hydro generation facilities resulting from the restructurings. Fossil GenCo sells the output of its portfolio of generation to FES pursuant to a purchased power contract approved by the Federal Energy Regulatory Commission (FERC). FES, in turn, sells its power into competitive wholesale and retail markets at market-based rates.

FENGen performs the same function as Fossil GenCo for the nuclear facilities owned by the FE subsidiaries, with the notable exception that FENOC continues to perform its role as the licensed operator for the FE fleet of nuclear plants—PNPP, the Beaver Valley Power Station (BVPS), and the Davis-Besse Nuclear Power Station (DBNPS). FENGen sells the output of its plants to FES under a cost-based wholesale contract approved by the FERC and previously reviewed by the NRC in connection with 2005 and 2006 restructuring activities (ADAMS Accession Nos. ML053460215 and ML061990593, respectively). Thus, majority ownership of PNPP, BVPS, and DBNPS was transferred to FENGen to further implement the restructuring of FE's electric utility operations and to enhance the ability of FE and its subsidiaries to compete in electric energy markets. However, at that time, OE's 12.58-percent interest in PNPP was subject to sale-leaseback arrangements that were entered into in 1987, and this interest was not transferred to FENGen. Instead, OE entered into commercial arrangements whereby FENGen acquired the rights to this 12.58 percent of PNPP's electrical output and responsibility for the associated costs of this interest in PNPP.

The lease arrangements for OE's 12.58-percent interest in PNPP expire on May 30, 2016, and FENGen has acquired the rights to own this 12.58-percent interest beginning May 31, 2016. Thus, FENGen requires the NRC's prior written consent so that this interest in PNPP may be transferred from OE to FENGen at 12:00 a.m. on May 31, 2016. The conforming license amendment can be issued effective May 31, 2016.

The technical qualifications of FENOC will not be affected by the proposed transfers of control of OE's leased interest in PNPP to FENGen. There will be no physical changes to PNPP and no changes in the daily operations of FENOC in connection with the transfers of OE's leased interests in PNPP. FENOC will, at all times, remain the licensed operator of PNPP, and there will be no changes in the FENOC senior management team resulting from the proposed license transfer.

3.0 REGULATORY EVALUATION

The applicant's request for approval of the direct transfer of control of the license and conforming amendment for PNPP, as discussed in this safety evaluation (SE), is made under 10 CFR 50.80 and 10 CFR 50.90, respectively. Section 50.80(a) of 10 CFR states, in part:

No license for a production or utilization facility or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) apply. Section 50.80(b) of 10 CFR states, in part, that an application for a license transfer shall include as much information as described in 10 CFR 50.33, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Applications; Technical Information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."

Section 50.80(c) of 10 CFR states, in part:

[T]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Section 50.90 of 10 CFR states, in part, whenever a holder of a license, including a construction permit and operating license under this part, desires to amend the license or permit, application for an amendment must be filed with the Commission.

Pursuant to 10 CFR 50.33(k)(1), FENOC is required to provide information described in 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

In its review, the NRC staff applied guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," published February 1999, to evaluate whether the financial qualifications of the licensees would be affected by the proposed transfers.

In addressing foreign ownership, control, or domination (FOCD) issues, Sections 103d and 104d of the AEA provide, in relevant part, that no license may be issued to the following:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled or dominated by an alien, a foreign corporation or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation at 10 CFR 50.38, "Ineligibility of Certain Applicants," is the regulatory provision that implements the foreign ownership, control or domination provisions of the AEA. The NRC staff evaluates ownership, control, or domination information submitted by the applicant pursuant to 10 CFR 50.33(d)(3)(iii), in a manner that is consistent with the guidance provided in the Standard Review Plan (SRP), "Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses," dated June 1999 (hereafter referred to as the "SRP on FOCD"), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (64 FR 52357-52359).

The NRC staff also reviews insurance and indemnity information that pertains to the Price-Anderson Act (Section 170 of the AEA). The regulations in 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," implement the Price-Anderson Act requirements. In addition, the regulations in 10 CFR 50.54(w) implement onsite property insurance requirements.

NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2-13.1.3, "Operating Organization," were used for this review.

4.0 FINANCIAL QUALIFICATIONS

The regulation at 10 CFR 50.33(f) provides that each application shall state the following:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, [an application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility is:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

Based on its review of the application, the NRC finds that the owner and operator licensees of PNPP (FENGen and FENOC, respectively), do not qualify as electric utilities as defined in 10 CFR 50.2, as they are not rate-regulated by State or other agencies. FENOC further concurred in that assessment in its January 18, 2016, response to an NRC request for additional information (RAI) in which the licensee states, "FENGen is not asserting that any percentage interest of PNPP should be treated as being held by an electric utility. Rather, financial qualifications for 100 percent of PNPP should be assessed on a non-electric utility basis, and this involves no change in the status previously assessed by the NRC."

In accordance with 10 CFR 50.33(f), a nonutility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being

sought. The information must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. In making this showing, the applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source(s) of funds to cover these costs. For license transfers, direct or indirect, the relevant 5-year period is that time immediately following the proposed merger. For indirect license transfers, the information submitted must demonstrate that the proposed merger and indirect transfers will not affect the financial qualifications of the licensees.

Also, 10 CFR 50.33(k)(1) requires that the licensees for the facilities must provide information as described in 10 CFR 50.75, demonstrating that there will be no effect on the licensees' provision of reasonable assurance that funds will be available to decommission the facilities. Section 5.0 of this SE discusses decommissioning funding assurance.

In its application, FENOC submitted financial information that provides evidence that FENGen, the 100-percent owner of PNPP, following the transfer transaction, meets NRC's financial qualification requirements. This information is provided through the following three pieces of information submitted by FENOC: (1) 5-year pro forma financial statements for FENGen showing that FENGen expenses are adequately covered by the generation of revenue, resulting in positive net income,¹ (2) a \$400-million financial support agreement, provided by FENGen's direct parent, FES, which provides available funding to FENGen to meet its obligations relating to interests in the nuclear units that FENGen owns, and (3) access to a \$1.5-billion revolving credit facility through FES and FES's affiliate, Alleghany Energy Supply Company, LLC.

The NRC staff performed its own evaluation to assess FENGen's ability to reasonably ensure coverage of its operational costs from income generated by its nuclear power operations. The NRC staff's analysis considered FENGen's nuclear power production capacity, the potential revenue that could be generated from its power production capacity using current electricity rates, and the cost of nuclear power production.² Based on this analysis, the staff concluded that FENGen has reasonable assurance of generating the revenue necessary to adequately cover its operations costs. Therefore, the NRC staff concludes that FENGen meets the financial qualification requirements in 10 CFR 50.33(f).

Additionally, FENGen has access to additional capital through both a \$400-million financial support agreement, if needed, provided by its parent, FES, and possible access, if needed, from the revolving credit facility, also through its parent, FES. These additional sources of capital could be made available should FENGen need additional funding to cover estimated operations costs.

FENOC proposed the following change to license condition 3.C (renumbered as 3.B) to reflect the termination of its support agreement with FE, and the formation of its new financial support agreement with FES in the amount of \$400 million:

¹ Information provided by FENOC included revenue, expense, and net income for operations and maintenance with respect to all of FENGen's interests in BVPS, PNPP, and DBNPS.

² Average nuclear power production costs (2010–2014), as compiled by the Federal Energy Regulatory Commission from Form 1 filings, and as reported by the Nuclear Energy Institute is at <http://www.nei.org/Knowledge-Center/Nuclear-Statistics/Costs-Fuel,-Operation,-Waste-Disposal-Life-Cycle/US-Nuclear-Industry-Production-Costs-by-Quartile>.

B. The Support Agreement in the amount of \$400 million from FirstEnergy Solutions Corp. (FE Solutions) described in the application dated June 30, 2015 shall be effective and consistent with the representations in the application. FENGen shall take no action to void, cancel or modify the Support Agreement without the prior written consent of the NRC staff. FENGen shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than 10 working days after any funds are provided to FENGen by FirstEnergy Solutions under the terms of the Support Agreement.

The NRC staff has reviewed the proposed license condition and finds that it appropriately reflects the availability of financial resources, if needed, as provided in its application.

Financial Qualifications Summary

In consideration of the above, the NRC staff has determined that FENGen, which will hold 100-percent ownership of PNPP following the transfer transaction, has reasonable assurance of obtaining the funds necessary to cover estimated operation costs of PNPP for the period of the license, and that the proposed change, from 87.42-percent ownership to 100-percent ownership of the PNPP facility as a result of the direct transfer transaction, will not affect the financial qualification of the licensee to possess, use, and operate PNPP. In addition, support from its parent in the form of a financial support agreement, and additional access to cash as necessary, also through its parent, FES, provides additional evidence of reasonable assurance that funds will be available to cover estimated costs at the licensed facility.

5.0 DECOMMISSIONING FUNDING ASSURANCE

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e). The NRC has determined that the requirement to provide reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility must demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility.

The regulation at 10 CFR 50.75(b) also requires, in part, the following:

Each power reactor applicant for or holder of an operating license ... for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

Further, the regulation at 10 CFR 50.75(c) provides the "Table of Minimum Amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt [megawatt thermal]); adjustment factor."

Decommissioning Funding Assurance for PNPP

At the time of transfer, OE's existing trust funds for its leased interest in PNPP will be transferred to FENGen. FENGen's nuclear decommissioning trusts (NDTs) are held in external trust funds segregated from FENGen's assets and outside its administrative control. The funds are governed by the Master NDT Agreement with Mellon Bank, N.A. as Trustee. The terms of that agreement meet the requirements of 10 CFR 50.75(h)(1) and will remain in effect and govern the funds that are transferred by OE.

FENOC proposed the following change to license condition 3.A to reflect the transfer of decommissioning funds from OE to FENGen:

A. On June 1, 2016, OE shall transfer to FENGen the accumulated decommissioning funds held by OE for Perry. All such funds shall be deposited and held in FENGen nuclear decommissioning trust for Perry along with the other funds maintained by FENGen for Perry and shall be maintained in such trust outside of FENGen's administrative control and in accordance with the requirements of 10 CFR 50.75(h)(1).

As required by 10 CFR 50.75(f)(1) and submitted by letter dated March 31, 2015 (ADAMS Accession No. ML15090A447), FENOC provided information to the NRC on the status of decommissioning funding (DFS report) for PNPP as of December 31, 2014.

Per its March 31, 2015, letter, the site-specific cost estimate provided by FENOC, required for PNPP radiological decontamination and license termination, was \$1,054,131,000 (2014 dollars). This site-specific cost estimate exceeded the NRC minimum decommissioning formula amount of \$679,590,000 (2014 dollars). The amount of funds currently available in decommissioning trusts as of December 31, 2014, was \$486,363,357 (2014 dollars). In its March 31, 2015, submittal, FENOC stated, "If used in this (March 31, 2015) report, the site-specific cost estimates are based on a period of safe storage that is described in the estimate," and "FENOC has not made a final determination on the decommissioning approach for any of the listed nuclear units." Based on the referenced site-specific cost estimate and current funding level, and the potential by the licensee to use the period of safe storage allowed for by the NRC, staff determined the licensee meets NRC's decommissioning funding requirements.³

Specifically, the NRC staff determined that decommissioning funding assurance provided by the current licensee owners correctly reflected FENGen's ownership share of 87.42 percent of PNPP and OE's leased interest share of 12.58 percent of PNPP. The staff also analyzed the cost of FENOC's site-specific decommissioning cost estimate for PNPP against total current funding levels as provided by current owners, FENGen and OE, and evaluated decommissioning fund data over a 60-year SAFSTOR period, beginning with the expiration of the current operating license for PNPP on March 18, 2026. The NRC staff calculated the balance of funds at the end of SAFSTOR, which reflected funds available for decommissioning

³ Growth and compounding of the current fund amount of \$486,363,357 over the 10-year period between the time of this SE and the current operating license expiration date (March 18, 2026), plus growth and compounding during the 60-year SAFSTOR period, less the funding of all site-specific decommissioning expenses during that period, result in a trust fund balance at the end of decommissioning that exceeds that required to fund decommissioning.

in excess of current site-specific requirements. Accordingly, based on its review of decommissioning funding required to address site-specific decommissioning costs, and current funding levels required for site-specific decommissioning, the NRC staff determined that the owners of PNPP are providing adequate decommissioning funding assurance in accordance with the NRC's regulations for PNPP. Moreover, the staff finds that the direct transfer of control of OE's portion of PNPP, including the transfer of decommissioning funds, will not affect the decommissioning funding arrangements currently in place for PNPP, and that funds necessary to meet the NRC's decommissioning funding requirements will be available after the transfer.

FENOC proposed the deletion of former license condition 3.B, requiring an \$80-million parent company guarantee. The guarantee was previously required during a license transfer in 2005 because the decommissioning funds that were to be transferred by Penn Power to FirstEnergy Nuclear Generation Corp. (now FENGen) did not meet the NRC's minimum required amount for Penn Power's share of its funding requirement for BVPS, Units 1 and 2, and PNPP. As discussed above, FENOC has demonstrated that it has adequate decommissioning funding assurance in accordance with the NRC's regulations. Therefore, this license condition is no longer required.

Based on the discussion above, the NRC staff concludes that the applicant has complied with the regulations at 10 CFR 50.75(b) and (c) with respect to providing decommissioning funding assurance for PNPP. Accordingly, the NRC staff finds that the proposed license condition 3.A appropriately reflects the terms of transfer of the decommissioning funds and that the deletion of former license condition 3.B is acceptable.

6.0 ANTITRUST REVIEW

The Act does not require or authorize antitrust review of postoperating license transfer applications (Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (June 18, 1999)). The application here postdates the issuance of the operating license for the plant under consideration, and therefore, no antitrust review is required or authorized.

The NRC staff notes that the present license contains various antitrust conditions. No changes to these conditions are required as a result of the proposed license transfer other than the administrative removal of the name "Ohio Edison."

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the Act prohibit the NRC from issuing a license for a nuclear power plant to any corporation or other entity if the Commission knows or has reason to believe the plant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The NRC's regulation at 10 CFR 50.38 is the regulatory provision that implements this statute. The NRC evaluated the application in a manner that is consistent with the guidance provided in the SRP on FOCD to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

Furthermore, the NRC's position outlined in the SRP on FOCD states that "the foreign control prohibition should be given an orientation toward safeguarding the national defense and security." The SRP on FOCD provides three areas for review: (1) a review of all current Securities and Exchange Commission (SEC) Schedules 13D and 13G, which are required to be filed by owners of more than 5 percent of such a class with the SEC, (2) management positions held by non-U.S. citizens, and (3) the ability of foreign entities to control the appointment of management personnel.

In the application, FENOC states:

FE is a publicly traded company, and its securities are traded on the New York Stock Exchange and are widely held. Section 13(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78m(d), requires that a person or entity that owns or controls more than 5 percent of the securities of a company must file notice with the Securities and Exchange Commission (SEC). Based upon filings with the SEC, FE is not aware of any aliens, foreign corporations, or foreign governments that hold or may hold beneficial ownership of more than 5 percent of the securities of FE. No foreign entities have any representation on FE's Board of Directors or rights to appoint any managers or directors of FE.

The current directors and executive officers of FE, FES, and FENGen are United States citizens. There is no reason to believe that the Applicant is owned, controlled, or dominated by any alien, foreign corporation, or foreign government. Thus, the transfer of control of the leased interests will not result in any foreign ownership, domination, or control of these entities within the meaning of the Atomic Energy Act of 1954, as amended.

Based on the information provided, the NRC staff does not know or have any reason to believe that FENGen will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government within the meaning of the Act and 10 CFR 50.38. The NRC staff therefore concludes that the transfer will not result in PNPP's being owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

8.0 TECHNICAL QUALIFICATIONS

The purpose of the technical qualifications evaluation is to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe operation of the plant and that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance, as well as to evaluate proposed changes to the operating organization that may occur as a result of the license transfers.

8.1 Description of Changes to Management, Technical Support, and the Operation Organizations

The proposed transfer of control of OE's leased interest in PNPP will not result in any change in the role of FENOC as the licensed operator of the facilities. No physical changes will be made to PNPP, and there will be no changes in the day-to-day operation of this plant as a result of the proposed transfer.

The technical qualifications of the FENOC personnel are not affected by the proposed transfer of control of OE's leased interest in PNPP to FENOC. FENOC will, at all times, remain the licensed operator of PNPP, and there will be no changes in the FENOC senior management team resulting from the proposed license transfer.

8.2 Staffing

Because there will be no changes to the operating organization, normal staffing levels are not affected by the proposed license transfer. Because no changes will be made, the staffing continues to be acceptable based on prior review by the NRC.

8.3 Qualifications

Because this change does not affect the physical plant or its operating organization, there are no new or additional qualifications required to manage, operate, and maintain the plant subsequent to the license transfer. FENOC has been previously found to be qualified by the NRC staff, and because its qualification is not affected by this proposed license transfer, it continues to be qualified to be the licenseholder for PNPP.

8.4 Technical Conclusion

Because no physical modifications are being made to any plant systems or components and no changes are proposed to plant operation, staffing, or qualifications, the proposed changes are administrative in nature and will not adversely affect nuclear safety or the safe operation of PNPP. Therefore, the NRC staff concludes that the applicant continues to have an acceptable organization and adequate resources to provide technical support for the operation and maintenance of the facility, under both normal and off-normal conditions, and that the proposed license transfer is acceptable from the human performance point of view.

9.0 NUCLEAR INSURANCE AND INDEMNITY

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the AEA) and the NRC's implementing regulations at 10 CFR Part 140, the current indemnity agreement must be modified to reflect FENGen and FENOC's amended ownership status resulting from the direct transfer of OE's 12.58-percent minority share. FENGen's acquisition of the ownership interest in this plant will leave FENGen as the sole owner, with FENOC as the licensed operator, of PNPP (collectively, the licensees).

Consistent with NRC practice, the NRC staff will require FENGen to provide evidence that it has obtained the appropriate amount of insurance pursuant to 10 CFR 140.11(a)(4) and 10 CFR 50.54(w) which is effective concurrent with the date of the NRC's license amendment and amended indemnity agreement. Because the issuance of the amended license is directly tied to completion of the proposed direct license transfer, the order approving the transfer will be conditioned as follows:

FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation, LLC, shall provide satisfactory documentary evidence to the Director of the Office

of Nuclear Reactor Regulation, that as of the date of license transfer, the licensees reflected in the amended license have obtained the appropriate amount of insurance required by 10 CFR Part 140 and 10 CFR 50.54(w).

As required by 10 CFR 140.21, each reactor licensee should demonstrate its financial capacity to pay into the secondary tier of financial protection for each reactor it is licensed to operate and insure pursuant to 10 CFR 140.11(a)(4): \$121.255 million per incident and up to \$18.963 million per year. In its January 18, 2016, response to an NRC RAI, FENOC submitted certified financial documents for FE and FES (the parent companies of FENGen and FENOC) demonstrating cash flow (i.e., cash available to a company after all operating expenses, taxes, interest charges, and dividends have been paid) can be obtained, and would be available, for payment of retrospective premiums within three (3) months after this submittal. In addition, information in FENOC's response to the RAI also demonstrated FE and FES's financial capacity to provide secondary financial protection for its entire nuclear fleet, which includes PNPP and three other nuclear plants. Based on its review of this information, the staff concludes that FENGen and FENOC have met the requirements under 10 CFR 140.21 for proof of financial capacity to pay into the secondary tier of financial protection.

10.0 CONFORMING AMENDMENT

10.1 Introduction

FENOC requested approval of a proposed conforming amendment to Facility Operation License NPF-58. No physical or operating changes to the facility are requested.

10.2 Discussion

The changes to be made to the license are indicated in the conforming amendment in Enclosure 3 to the cover letter forwarding the NRC staff's order regarding the subject transfer. The changes accurately reflect the approved transfer action. The amendment involves no safety concerns and is administrative in nature. In addition to the proposed revision of the two license conditions described within the SE, FENOC has also proposed the deletion of license conditions 2.B.(7)(a) and (7)(b). These two license conditions describe OE's lease arrangement. At the conclusion of this transfer, OE will no longer have any leased interests in PNPP; therefore, the license conditions are no longer necessary. Accordingly, the NRC staff finds that the proposed amendment is acceptable.

10.3 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

11.0 STATE CONSULTATION

In accordance with the Commission's regulations, the Ohio State official was notified of the proposed issuance of the amendment. The State official had no comment.

12.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a direct transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the license transfer and conforming amendment.

13.0 CONCLUSION

In consideration of information provided in the license transfer application, the NRC staff has concluded, based on the considerations discussed above, that FENGen is financially qualified to conduct the activities under the license; has satisfied the NRC's decommissioning funding assurance requirements; is not owned, controlled, or dominated by a foreign individual or entity; and has met the applicable onsite and offsite insurance requirements. No physical changes will be made to PNPP, and there will be no changes in the day-to-day operation of the plant as a result of the transfer. The NRC staff also concludes that the proposed direct transfer of 12.58-percent ownership interest in PNPP from OE to FENGen will not affect the qualifications of FENGen for PNPP and that the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Principal Contributors: George Lapinsky, NRR
Victoria Huckabay, NRR
Eric Olvera, NRR
Richard Turtill, NRR

Date: April 15, 2016



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

FIRSTENERGY NUCLEAR OPERATING COMPANY

FIRSTENERGY NUCLEAR GENERATION, LLC

DOCKET NO. 50-440

PERRY NUCLEAR POWER PLANT, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. XXX
License No. NPF-58

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by FirstEnergy Nuclear Operating Company, et al. (the licensee, FENOC), dated June 30, 2015, as supplemented by letter dated January 18, 2016, complies 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. This license amendment is effective as of the date of its issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

William M. Dean, Director
Office of Nuclear Reactor Regulation

Attachment:
Changes to the Facility Operating
License No. NPF-58

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. XXX

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

INSERT

- 1 -
- 2 -
- 3 -
- 4 -
- 5 -
- 7 -
- 8 -

- 1 -
- 2 -
- 3 -
- 4 -
- 5 -
- 7 -
- 8 -

Replace the following pages of Appendix C to 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

INSERT

- 1 -
- 2 -
- 3 -
- 4 -
- 5 -
- 6 -

- 1 -
- 2 -
- 3 -
- 4 -
- 5 -
- 6 -

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 29555-0001

FIRSTENERGY NUCLEAR OPERATING COMPANY
FIRSTENERGY NUCLEAR GENERATION, LLC

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, LLC (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, LLC 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 and FirstEnergy Nuclear Generation, LLC, (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, LLC (owner).

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, LLC 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) Deleted

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, LLC

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 Owner is 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

(11) Mitigation Strategy License Condition

The licensee shall develop and maintain strategies for addressing large fires and explosions and that include the follow key areas:

- (a) Fire fighting response strategy with the following elements:
 1. Predefined coordinated fire response strategy and guidance
 2. Assessment of mutual aid fire fighting assets
 3. Designated staging areas for equipment and materials

- 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 _____, 2016 regarding the direct transfer from Ohio Edison Company (OE) to FirstEnergy Nuclear Generation, LLC (FENGen), FENOC and FENGen shall comply with the following conditions noted below.
- A. On June 1, 2016, OE shall transfer to FENGen the accumulated decommissioning funds held by OE for Perry. All such funds shall be deposited and held in FENGen nuclear decommissioning trust for Perry along with the other funds maintained by FENGen for Perry and shall be maintained in such trust outside of FENGen's administrative control and in accordance with the requirements of 10 CFR 50.75(h)(1).
- B. The Support Agreement in the amount of \$400 million from FirstEnergy Solutions Corp. (FE Solutions) described in the application dated June 30, 2015 shall be effective and consistent with the representations in the application. FENGen shall take no action to void, cancel or modify the Support Agreement without the prior written consent of the NRC staff. FENGen shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, no later than 10 working days after any funds are provided to FENGen by FirstEnergy Solutions under the terms of the Support Agreement.

C. Deleted

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, LLC

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

Definitions

Applicant shall mean the company 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-B.

Licensing Conditions

- (1) Applicant 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.

- (2) Applicant, and each of them, shall offer interconnections upon reasonable terms and conditions at the request of any other electric entity(ies) in the Combined CAPCO Company Territories (CCCT), such interconnection to be available (with due regard for any necessary and applicable safety procedures) for operation in a closed-switch synchronous operating mode if requested by the interconnecting entity(ies). Ownership of transmission lines and switching stations associated with such interconnection shall remain in the hands of the party funding the interconnection subject, however, to any necessary safety procedures relating to disconnection facilities at the point of power delivery. Such limitations on ownership shall be the least necessary to achieve reasonable safety practices and shall not serve to deprive purchasing entities of a means to effect additional power supply options.
- (3) Applicant shall engage in wheeling for and at the request of other entities in the CCCT:
- (a) of electric energy from delivery points of Applicant to the entity(ies); and,
 - (b) of power generated by or available to the other entity, as a result of its ownership or entitlements* in generating facilities, to delivery points of Applicant designated by the other entity.

Such wheeling services shall be available with respect to any unused capacity on the transmission lines of Applicant, the use of which will not jeopardize Applicant's system. In the event Applicant must reduce wheeling services to other entities due to lack of capacity, such reduction shall not be effected until reductions of at least 5 percent have been made in transmission capacity allocations to other Applicant in these proceedings and thereafter shall be made in proportion to reductions** imposed upon other Applicant to this proceeding.

* "Entitlement" includes but is not limited to power made available to an entity pursuant to an exchange agreement.

** The objective of this requirement is to prevent the pre-emption of unused capacity on the lines of one Applicant by other Applicants or by entities the transmitting Applicant deems noncompetitive. Competitive entities are to be allowed the opportunity to develop bulk power services options even if this results in re-allocation of CAPCO (Central Area Power Coordination Group) transmission channels. This relief is required in order to avoid prolongation of the effects of Applicant's illegally sustained dominance.

Applicant shall make reasonable provisions for disclosed transmission requirements of other entities in the CCCT in planning future transmission either individually or within the CAPCO grouping. By "disclosed" is meant the giving of reasonable advance notification of future requirements by entities utilizing wheeling services to be made available by Applicant.

- (4) (a) Applicant shall make available membership in CAPCO to any entity in the CCCT with a system capability of 10 Mw or greater;
- (b) A group of entities with an aggregate system capability of 10 Mw or greater may obtain a single membership in CAPCO on a collective basis;*
- (c) Entities applying for membership in CAPCO pursuant to License Condition 4 shall become members subject to the terms and conditions of the CAPCO Memorandum of Understanding of September 14, 1967, and its implementing agreements; except that new members may elect to participate on an equal percentage of reserve basis rather than a P/N allocation formula for a period of twelve years from date of entrance.** Following the twelfth year of entrance, new members shall be expected to adhere to such allocation methods as are then employed by CAPCO (subject to equal opportunity for waiver or special consideration granted to original CAPCO members which then are in effect).

* E.g., Wholesale Customer of Ohio Edison (WCOE).

** The selection of the 12-year period reflects our determination that an adjustment period is necessary since the P/N formula has a recognized effect of discriminating against small systems and forcing them to forego economies of scale in generation in order to avoid carrying excessive levels of reserves. We also found the P/N is not entirely irrational as a method of reserve allocation. We have observed that Applicants themselves provided adjustment periods and waivers to integrate certain Applicants into the CAPCO reserve requirement program. The 12-year period should permit new entrants to avoid initial discrimination but to accommodate and adjust to the CAPCO system over some reasonable period of time. Presumably new entrants will be acquiring ownership shares and entitlements during the 12-year period so that adverse consequences of applying the P/N formula will be mitigated.

- (d) New members joining CAPCO pursuant to this provision of relief shall not be entitled to exercise voting rights until such time as the system capability of the joining member equals or exceeds the system capability of the smallest member of CAPCO which enjoys voting rights.*
- (5) Applicant shall sell maintenance power to requesting entities in the CCCT upon terms and conditions no less favorable than those Applicant make available: (a) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (b) to non-Applicant entities outside the CCCT.
- (6) Applicant shall sell emergency power to requesting entities in the CCCT upon terms and conditions no less favorable than those Applicant make available: (a) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (b) to non-Applicant entities outside the CCCT.
- (7) Applicant shall sell economy energy to requesting entities in the CCCT, when available, on terms and conditions no less favorable than those available: (a) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (b) to non-Applicant entities outside the CCCT.
- (8) Applicant shall share reserves with any interconnected generation entity in the CCCT upon request. The requesting entity shall have the option of sharing reserves on an equal percentage basis or by use of the CAPCO P/N allocation formula or on any other mutually agreeable basis.
- (9) (a) Applicant shall make available to entities in the CCCT access to the Davis-Besse 1, 2 and 3 and the Perry 1 and 2 nuclear units and any other nuclear units for which Applicant or any of them, shall apply for a construction permit or operating license during the

* Our objective is to prevent impediments to the operation and development of an area-wide power pool through the inability of lesser entities to respond timely or to make necessary planning commitments. While we grant new member entities the opportunity to participate in CAPCO it is not our intent to relieve joining entities of responsibilities and obligations necessary to the successful operation of the pool. For those smaller entities which do not wish to assume the broad range of obligations associated with CAPCO membership we have provided for access to bulk power service options which will further their ability to survive and offer competition in the CCCT.

next 25 years. Such access, at the option of the requesting entity, shall be on an ownership share, or unit participation or contractual pre-purchase of power basis.* Each requesting entity (or collective group of entities) may obtain up to 10% of the capacity of the Davis-Besse and Perry Units and 20% of future units (subject to the 25-year limitation) except that once any entity or entities have contracted for allocations totaling 10% or 20%, respectively, no further participation in any given units need be offered.

- (b) Commitments for the Davis-Besse and Perry Units must be made by requesting entities within two years after this decision becomes final. Commitments for future units must be made within two years after a construction permit application is filed with respect to such a unit (subject to the 25-year limitation) or within two years after the receipt by a requesting entity of detailed written notice of Applicant's plans to construct the unit, whichever is earlier; provided, however, that the time for making the commitment shall not expire until at least three months after the filing of the application for a construction permit. Where an Applicant seeks to operate a nuclear plant with respect to which it did not have an interest at the time of filing the application for the construction permit, the time periods for commitments shall be the same except that reference should be to the operating license, not the construction permit.
- (10) Applicant shall sell wholesale power to any requesting entity in the CCCT, in amounts needed to meet all or part of such entity's requirements. The choice as to whether the agreement should cover all or part of the entity's requirements should be made by the entity, not the Applicant or Applicants.

* Requesting entities' election as to the type of access may be affected by provisions of State law relating to dual ownership of generation facilities by municipalities and investor-owned utilities. Such laws may change during the period of applicability of these conditions. Accordingly, we allow requesting entities to be guided by relevant legal and financial considerations (including Commission regulations on nuclear power plant ownership) in fashioning their requests.

- (11) These conditions are intended as minimum conditions and do not preclude Applicant from offering additional wholesale power or coordination services to entities within or without the CCCT. However, Applicant shall not deny wholesale power or coordination services required by these conditions to non-Applicant entities in the CCCT based upon prior commitments arrived at in the CAPCO Memorandum of Understanding or implementing agreements. Such denial shall be regarded as inconsistent with the purpose and intent of these conditions.

The above conditions are to be implemented in a manner consistent with the provisions of the Federal Power Act and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

P. Harden

- 2 -

The order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Kimberly J. Green
Senior Project Manager
Plant Licensing Branch III-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosures:

1. Order
2. Safety Evaluation
3. Conforming Amendment to NPF-58

cc w/encls.: Distribution via ListServ

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OFFICE	DORL/LPL3-1/PM	DORL/LPL3-1/LA	DIRS/IFIB/BC	DIRS/IOLB/BC	DRA/APHB/BC
NAME	KGreen	MHenderson	ABowers	SSloan (DMuller for)	SWeerakkody
DATE	3/23/2016	3/23/2016	3/15/2016	3/25/2016	8/12/2015
OFFICE	TECH ED	OGC	DORL/LPL3-1/BC	NRR/DORL/D	NRR/D
NAME	CHsu	BMizuno NLO w/edits	DWrona	ABoland (PKrohn for)	WDean
DATE	4/01/2016	3/31/2016	4/05/2016	4/08/2016	4/15/2016

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