



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

**SAFETY EVALUATION FOR THE NOTICE OF REPLACEMENT OF PARENT COMPANY
GUARANTEES FOR THE BEAVER VALLEY POWER STATION INDEPENDENT SPENT
FUEL STORAGE INSTALLATION (ISFSI), DAVIS-BESSE NUCLEAR POWER STATION
ISFSI, AND PERRY NUCLEAR POWER PLANT ISFSI; DOCKET NOS. 72-1043, 72-14, 72-69**

1.0 INTRODUCTION

By letter dated December 21, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16356A094), FirstEnergy Nuclear Operating Company (FENOC) submitted a Replacement of Parental Guarantees notice (Notice) for the Beaver Valley Power Station (BVPS), Davis-Besse Nuclear Power Station (DBNPS), and Perry Nuclear Power Plant (PNPP) Independent Spent Fuel Storage Installations (ISFSIs) to the U.S. Nuclear Regulatory Commission (NRC).

The Notice informs the NRC of FirstEnergy Solutions Corp.'s (FES) inability to maintain the parent company guarantees (PCGs) established to provide assurance that adequate funds will be available for the radiological decommissioning of the subject ISFSIs, in accordance with NRC regulations. The Notice further advises the NRC of the establishment of a decommissioning trust as an alternative method to satisfy the ISFSI financial assurance obligations.

2.0 REGULATORY BASIS

The Notice is made pursuant to the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 72.30, "Financial assurance and recordkeeping for decommissioning," and 10 CFR Part 30, Appendix A, "Criteria Relating to Use of Financial Test and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning," as referenced in NUREG-1757, Volume 3, Revision 1, "Consolidated Decommissioning Guidance – Financial Assurance, Recordkeeping, and Timeliness."

10 CFR Part 30 Appendix A II.C.2 states:

If the parent company no longer meets the requirements of paragraph A of this section, the licensee must send notice to the Commission of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

Enclosure

3.0 BACKGROUND

Pursuant to section (b) of 10 CFR 72.30, "Financial assurance and recordkeeping for decommissioning," a licensee must submit for NRC review and approval a decommissioning plan that contains, among other things, (1) information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI; and (2) a description of the method of assuring funds for decommissioning from paragraph (e) of §72.30. 10 CFR 72.30(e) provides a list of approved methods for establishing and maintaining financial assurance for decommissioning. Allowable financial instruments include, among other things, prepayment made into a trust account and surety methods, including PCGs that meet the criteria of 10 CFR Part 30, Appendix A.

By letters dated December 9, 2015 (ML15343A350), and March 21, 2016 (ML16081A240), FENOC submitted to the NRC the ISFSI decommissioning funding plans (DFPs), as required by 10 CFR 72.30, for the subject ISFSIs. According to the DFPs, funding for these facilities is provided by two PCGs. One PCG was issued by First Energy Corp. (FE) for the Ohio Edison Company and The Toledo Edison Company decommissioning obligations associated with the BVPS Unit No. 2 ISFSI and the PNPP ISFSI (ML14183B295). The second PCG was issued by FES for the FirstEnergy Nuclear Generation, LLC (FENGen) decommissioning obligations for the BVPS, Unit Nos. 1 and 2, DBNPS, and PNPP ISFSIs (ML15181A323).

On April 15, 2016, the NRC issued an Order (ML16078A092) that transferred the Ohio Edison Company leased interests in PNPP to FENGen. The transfer resulted in PNPP, including the PNPP ISFSI, being fully owned by FENGen.

Additionally, on June 24, 2016, FENOC, on behalf of Ohio Edison Company, The Toledo Edison Company, and FENGen, submitted a request to the NRC (ML16182A155) to transfer the Ohio Edison Company and The Toledo Edison Company leased interests in BVPS, Unit No. 2 to FENGen. Once the transfers are approved by the NRC, and upon expiration of the lease terms on June 1, 2017, FENGen will fully own BVPS, Unit Nos. 1 and 2, DBNPS, and PNPP, including the respective ISFSIs.

On July 29, 2016, Moody's downgraded the FES credit rating from Baa3 to Ba2. On August 1, 2016, Standard and Poor's downgraded the FES credit rating from BBB- to BB-. According to the Notice, subsequent additional downgrades have occurred. As a result of the credit downgrades, FES no longer satisfies the financial test criteria for guarantors, as prescribed in 10 CFR Part 30, Appendix A, specifically Appendix A II.A.2.(i), which requires that the parent company have a "current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, A, or BBB (including adjustments of + and -) as issued by Standard and Poor's or Aaa, Aa, A, or Baa (including adjustment of 1, 2, or 3) as issued by Moody's." As such, to satisfy the regulatory requirements for providing funding assurance for the radiological decommissioning of its ISFSIs, FENGen has opted to use the prepayment method. Accordingly, FENGen has established a decommissioning trust for all of its ISFSI obligations, including the Ohio Edison Company and The Toledo Edison Company obligations.

4. ANALYSIS

4.1 Notice of Inability to Satisfy the Financial Test Criteria for a Parent Company Guarantee

The NRC staff (staff) reviewed all references provided in the Notice regarding the cancellation of the current PCGs and the requirements related to the financial test criteria for PCGs, as described in 10 CFR Part 30, Appendix A and referenced in 10 CFR 72.30(e) and NUREG 1757, Vol. 3, Rev. 1. The staff agrees with the licensee that, based on the credit downgrades, FES no longer satisfies the financial test criteria for PCGs and that, accordingly, FENGen can no longer rely on the FES PCGs to satisfy its ISFSI decommissioning obligations. The staff recognizes that the NRC was notified within 90 days of the end of the fiscal year that FES can no longer satisfy the financial test criteria, as required by 10 CFR Part 30, Appendix A and the requirements of the FES PCG (ML15181A323).

4.2 Notification of Alternate Financial Assurance for ISFSI Decommissioning Obligations

Pursuant to 10 CFR 72.30(e), FENGen has established a decommissioning trust as its alternate method of financial assurance to satisfy its ISFSI decommissioning obligations. According to the licensee, the FENGen ISFSI decommissioning trust was effective on November 28, 2016, and funded with an initial contribution of \$10 million. In order to perform a conservative analysis, the staff compared the most recent decommissioning cost estimates for the BVPS, DBNPS, and PNPP ISFSIs (\$8.02 million, \$5.49 million, and \$7.89 million, respectively), totaling approximately \$21.4 million, to the value of the initial decommissioning trust fund (DTF) contribution of \$10 million plus a 2% real rate of return through 2065, which aligns with the year of projected license termination for the PNPP ISFSI. According to the decommissioning funding plans for the FENGen ISFSI obligations, PNPP will be the first ISFSI to decommission in 2065, followed by DBNPS in 2067, and BVPS in 2076. The staff found that the total of the ISFSI DTF in 2065 will be approximately \$25.92 million.

NRC staff has reviewed the financial assurance mechanism for the BVPS, DBNPS, and PNPP ISFSIs according to NUREG-1757, Volume 3, "Financial Assurance, Recordkeeping, and Timeliness." Based on this review, staff finds that the designated trustee, Bank of New York Mellon, is a financial institution that has the authority to act as trustee and whose trust operations are regulated and examined by a Federal or State agency, in accordance with NUREG-1757, Volume 3, Section 4.3.2.1, "Trust Funds." Furthermore, the staff has determined that, although the financial assurance mechanism and supporting documentation submitted by the licensee do not conform to NRC guidance, the amount of financial assurance covers the estimated \$21.4 million needed to decommission the BVPS, DBNPS, and PNPP ISFSIs. Therefore, based on the foregoing, the staff finds the trustee and the trust to be acceptable.

5.0 CONCLUSION

The NRC staff finds that FENOC's notification to terminate the existing PCGs for the BVPS, DBNPS, and PNPP ISFSIs complies with the requirement in 10 CFR Part 30, Appendix A that licensees provide notice to the NRC within 90 days after the end of the fiscal year that the parent company can no longer satisfy the financial test criteria for PCGs.

Furthermore, the staff finds that FENOC's establishment of an ISFSI decommissioning trust as an alternate method of financial assurance for decommissioning satisfies the financial assurance criteria of 10 CFR 72.30(e), including the requirement in 10 CFR Part 30, Appendix A to provide alternate financial assurance within 120 days after the end of the fiscal year for which the financial test criteria for PCGs are no longer satisfied.