



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

January 8, 2019

Ms. Margrethe Kearney
Ms. Andrene Dabaghi
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601

SUBJECT: OEDO-18-00160 – LETTER REQUESTING COMMENTS ON THE PROPOSED DIRECTOR'S DECISION RE: 10 CFR 2.206 PETITION FOR THE CITIZEN COMPLAINT AND REQUEST FOR AN ENFORCEMENT ACTION WITH REGARD TO FIRSTENERGY NUCLEAR FACILITY OPERATIONS IN OHIO AND PENNSYLVANIA

Dear Ms. Kearney and Ms. Dabaghi:

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for Action under This Subpart," the U.S. Nuclear Regulatory Commission (NRC) staff reviewed your petition dated March 27, 2018, addressed to Mr. Victor M. McCree, then Executive Director for Operations. The NRC staff's proposed Director's Decision on the petition is enclosed. Please provide comments on any portions of the decision that you believe are inaccurate or on any issues in the petition that have not been fully addressed. The NRC staff is making a similar request of the licensee. Consistent with Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," this will be the last opportunity to provide comments. The NRC staff will then review the comments provided by you and the licensee and consider them in the final version of the Director's Decision.

Please provide your comments within 14 days from the date of this letter.

Sincerely,

A handwritten signature in black ink that reads "Craig G. Erlanger".

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-334, 50-412, 50-346, and 50-440

Enclosure:
Proposed Director's Decision

cc: Listserv

ENCLOSURE

PROPOSED DIRECTOR'S DECISION

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF NUCLEAR REACTOR REGULATION

Ho K. Nieh, Director

In the Matter of)	Docket Nos. 50-334 and 50-412
)	50-346
)	50-440
)	
FirstEnergy Nuclear Operating Company)	License Nos. DPR-80 and DPR-82
)	NPF-3
)	NPF-58
)	
Beaver Valley Power Station, Units 1 and 2)	
Davis-Besse Nuclear Power Station, Unit 1)	
Perry Nuclear Power Plant, Unit 1)	

PROPOSED DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated March 27, 2018, as supplemented on October 8, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML18094A642 and ML18282A242, respectively), the Environmental Law and Policy Center filed a petition with U.S. Nuclear Regulatory Commission (NRC) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, "Requests for Action under This Subpart." The petitioner requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take the following actions:

(A) Issue Demands for Information

- (1) Promptly issue a Demand for Information to FirstEnergy Corp. (FE), FirstEnergy Solutions (FES), FirstEnergy Nuclear Generation, LLC (NG), and FirstEnergy Nuclear Operating Company (FENOC) requesting site-specific decommissioning

funding plans for BVPS, DBNPS, and PNPP.

- (2) Promptly issue a Demand for Information to FE, FES, NG, and FENOC regarding their reliance on external trust funds from FE and FES to satisfy their decommissioning financial obligations.
- (3) Promptly issue a Demand for Information to FE, FES, NG, and FENOC regarding their continued reliance on Parent Guarantees from FE to satisfy decommissioning funding obligations, including the ability of FE to satisfy the parent company guarantee financial test under Appendix A, "Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning," to 10 CFR Part 30, "Rules of General Applicability to the Domestic Licensing of Byproduct Material."
- (4) Promptly issue a Demand for Information to FES, NG, and FENOC to the extent that they are relying on parent company guarantees from FES to satisfy decommissioning funding obligations, including the ability of FES to satisfy the parent company guarantee financial test under 10 CFR Part 30, Appendix A.
- (5) Promptly issue a Demand for Information to FE, FES, NG, and FENOC with regard to their proposed investment and financial contribution plans to make up the current decommissioning shortfall.
- (6) Promptly issue a Demand for Information to FE and FES with regard to each of their commitments to guarantee coverage of NG's and FENOC's decommissioning trust fund shortfalls in the event of bankruptcy.

(B) Notice of Violation and Penalties

- (1) Promptly issue a Notice of Violation against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 U.S.C.A. Section 2201(x)(1), and 10 CFR, Section 50.75, "Reporting and Recordkeeping for Decommissioning Planning."

- (2) Promptly issue civil penalties against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 U.S.C.A., Section 2201(x)(1), and 10 CFR Section 50.75.

- (3) Promptly issue an order to suspend NG's and FENOC's licenses for BVPS, DBNPS, and PNPP.

(C) Other Requests

The petitioner also urges the NRC to prohibit NG and FENOC from placing their nuclear facilities into a SAFSTOR status for purely financial reasons. Under SAFSTOR, often considered "deferred dismantling," a nuclear facility is maintained and monitored in a condition that allows the radioactivity to decay; afterwards, the plant is dismantled and the property decontaminated. The petitioner requests that the NRC give immediate emergency consideration to this petition in light of FE's and FES's rapidly deteriorating financial conditions.

(D) Basis for Petitioner's Request

The basis for the petitioner's request, as stated in the petition and the supplement, is summarized below:

1. NG's and FENOC's decommissioning trust amounts are insufficient on their own to provide reasonable assurance of funding.
2. FE cannot rely on rate increases forced on retail ratepayers to pay for the decommissioning trust fund shortfalls.
3. The costs, including SAFSTOR, may be much higher than expected because of significantly higher trust fund shortfalls, as reported by the Callan Institute and flaws in the NRC's cost estimating formula.
4. On March 28, 2018, FES and FENOC announced and informed the NRC by letter dated April 25, 2018, that they would permanently retire all four of their reactors within the next 3 years. If the plants close in 2020 and 2021, the funds cannot grow to levels that will pay for the required decommissioning.
5. The parent companies FE and FES filed for bankruptcy on March 31, 2018.
6. According to the petitioner, the transcript from a recent Federal court proceeding provides additional information about funding for FE's nuclear plant decommissioning in the FES bankruptcy case (see Case No. 18-50757, "Motion of Debtors to Approve Settlement (dated August. 26, 2018)), which was heard on September 25, 2018, by the

Honorable Judge Alan M. Koschik, U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the Northern District of Ohio.

Although the petition does not request specific immediate action(s), it does request "immediate emergency consideration." Based on the information provided in the petition, the petition review board (PRB) determined that the financial concerns do not raise an imminent safety issue or indicate that the licensee, FENOC, is unable to safely operate the facilities listed in the petition. The PRB concluded that there is no current public health and safety concern requiring immediate NRC action because financial concerns do not raise an imminent safety issue or indicate that FENOC is unable to safely operate the facilities listed in the petition. The petition manager informed the petitioner of this conclusion by e-mail on May 2, 2018 (ADAMS Accession No. ML18123A299). The supplement, submitted by the petitioner on October 8, 2018 (ADAMS Accession No. ML18282A242), did not expand the scope of the petition or request additional actions that should be considered as a new petition.

Additionally, the petitioner met with the PRB on June 19, 2018, to discuss the petition. The transcript of this meeting is treated as a supplement and is publicly available at ADAMS Accession No. ML18194A395. The transcript is also available for inspection at the NRC's Public Document Room (PDR), located at O1F21, 11555 Rockville Pike (first floor), Rockville, MD 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's 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's PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

On August 2, 2018, the petition manager informed the petitioner by letter that the PRB had determined that the petition meets the acceptance criteria for review and that it has made an initial recommendation to accept the petition for review (ADAMS Accession No. ML18220B314). The petition manager also asked whether the petitioner desired an opportunity to comment on this recommendation, in person or through a teleconference, consistent with Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," dated October 25, 2000. The petitioner declined this offer for a second meeting with the PRB.

II. Discussion

FENOC Is Currently in Compliance with NRC Regulations

The NRC has a comprehensive, regulation-based, framework that provides oversight of a licensee's decommissioning funding during operation and decommissioning. During operations, licensees must biennially submit decommissioning funding status reports by March 31. At 5 years before the projected permanent shutdown of its reactors until license termination, licensees must submit annual decommissioning funding status reports by March 31 of each year. Additionally, at intervals not to exceed 3 years, a licensee must update and submit its decommissioning funding plan for its independent spent fuel storage installation (ISFSI) to account for any changes in costs.

FE is the parent company of FES and FENOC, which are wholly-owned subsidiaries. The nuclear plants are owned by NG, which is, in turn, a wholly-owned subsidiary of FES. The nuclear plants are operated by FENOC. FENOC and NG are the licensees for BVPS, DBNPS, and PNPP. FENOC submitted its most recent decommissioning funding status reports for BVPS, DBNPS, and PNPP in a letter to the NRC dated March 24, 2017 (ADAMS No. ML17083B221). Based on its review of these reports, the NRC staff concluded that FENOC met the minimum funding requirements for future radiological decommissioning of its NRC-

licensed facilities for the 2017 reporting cycle, and that there were no shortfalls in decommissioning funding.

In accordance with 10 CFR 50.75(f)(1), FENOC is required to submit its next decommissioning funding status reports for BVPS, DBNPS, and PNPP to the NRC by March 31, 2019. The NRC staff will conduct a similar review upon receipt of the next decommissioning funding status reports for the units, which will take into account the new expected shutdown dates, funding levels as of December 31, 2018, and any updated financial information necessary to demonstrate reasonable assurance that sufficient funds will be available for the radiological decommissioning of the sites. If a funding shortfall is identified, the NRC will evaluate any such scenario on a case-by-case basis. For an operating power reactor, the NRC reserves the right to take additional steps, in accordance with 10 CFR 50.75(e)(2), including conducting a review of the rate of accumulation of decommissioning funds, and to take additional actions, either independently or in cooperation with the Federal Energy Regulatory Commission and the licensee's State public utility commission, as appropriate. Additional actions may include modifying the licensee's schedule for accumulating decommissioning funds. In accordance with 10 CFR 50.82(c), for a licensee that permanently ceases operation before the expiration of its license, the NRC will determine the collection period for any shortfall of funds on a case-by-case basis upon application by the licensee, and will consider the specific financial situation of each licensee. The Office of Nuclear Reactor Regulation (NRR) continues to monitor FENOC's decommissioning financial assurance for its reactors and ISFSIs to ensure adequate funding and compliance with requirements for decommissioning funding.

Bankruptcy Proceedings

On March 31, 2018, FES, FENOC, and NG, filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. FE has not filed for bankruptcy. The U.S. Department of Justice, and the NRC's Office of the General Counsel, are working closely together to represent the NRC's interests in the bankruptcy proceeding, including protection and preservation of the

decommissioning trust funds and continued compliance with the requirements for decommissioning funding. The proceeding in the U.S. bankruptcy court may result in changes to FENOC's debt structure, including reorganization and the transfer of control of the reactor operating licenses. Any such license transfers would be subject to NRC review and approval. NRC license transfer reviews include, among other things, a review of the applicant's financial qualifications, technical qualifications, and decommissioning funding, and would provide for public participation and an opportunity to request a hearing and petition to intervene. While the bankruptcy proceeding is in progress, and until license termination, licensees are required to continue to comply with NRC regulations.

Additionally, the petitioner submitted the transcript from the recent Federal Court proceeding in the FES bankruptcy case to the NRC as a supplement to the petition on October 8, 2018 (ADAMS Accession No. ML18282A242). The NRC staff reviewed this transcript and did not find any information in the supplement of which it was not previously aware or that warranted immediate action. The NRC will continue to monitor the bankruptcy proceedings and take action, as necessary, to ensure that the licensee remains in compliance with the agency's regulations.

SAFSTOR

The petition "urges the NRC to prohibit NG and FENOC from placing their nuclear facilities into SAFSTOR for purely financial reasons." Section 3.2.2, "SAFTOR" of NUREG 0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," Supplement 1, Volume 1, issued November 2002 (ADAMS Accession No. ML023470304), lists SAFSTOR as one of three options that the NRC finds acceptable for a licensee to use in decommissioning its facility. As such, SAFSTOR is an option currently available to FENOC.

The NRC is currently considering changes to its decommissioning requirements through rulemaking. The NRC expects to publish the proposed rule later this year in the

Federal Register. After the agency publishes the proposed rule, members of the public will be able to access the rule through a link on the NRC's public Web site at

<https://www.nrc.gov/reading-rm/doc-collections/rulemaking->

[ruleforum/active/RuleDetails.html?id=49](https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleDetails.html?id=49). During the comment period, members of the public can submit their comments through a link on the NRC's Web site at:

<https://www.regulations.gov/docket?D=NRC-2015-0070>.

III. Conclusion

In summary, the NRC has a comprehensive, regulation-based, framework that provides for oversight of a licensee's decommissioning funding during operation and decommissioning. The licensees' most recent decommissioning funding status report, dated March 24, 2017, indicated that the licensees met the minimum funding requirements for future radiological decommissioning of the NRC-licensed facilities for the 2017 reporting cycle, and that there were no shortfalls in decommissioning funding. If the NRC staff identifies a funding shortfall in its evaluation of the next status report, which is due by March 31, 2019, the NRC will evaluate the report and take appropriate action, including enforcement action, if necessary. Further, the NRC staff will continue to work with the U.S. Department of Justice to protect and preserve its interests in FENOC's compliance with decommissioning requirements in the bankruptcy proceeding. Based on the current information available, the NRC staff concludes that there is an insufficient basis to find that the licensees are out of compliance with the NRC's decommissioning financial assurance requirements. Therefore, based on the continuing oversight and actions described above, no further action is necessary at this time.

As a result of the NRC staff's evaluation, NRR has denied the petitioner's requests. The request to issue Demands for Information is denied because the licensees are required to provide the information requested, as applicable, in the next decommissioning funding status reports, which are due March 31, 2019. The requests to issue a Notice of Violation and Notice

of Civil Penalties to FE, FES, NG, and FENOC, and the request to issue an Order suspending the NG's and FENOC's licenses, are denied as current information available to the NRC does not demonstrate that the entities are out of compliance with NRC regulations. Therefore, there is an insufficient basis on which to take enforcement action, issue civil penalties, or suspend a license.

In accordance with 10 CFR 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for Commission review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this day of <Month Year>.

For the Nuclear Regulatory Commission.

Ho K. Nieh, Director,
Office of Nuclear Reactor Regulation.

SUBJECT: OEDO-18-00160 – LETTER REQUESTING COMMENTS ON THE PROPOSED DIRECTOR’S DECISION RE: 10 CFR 2.206 PETITION FOR THE CITIZEN COMPLAINT AND REQUEST FOR AN ENFORCEMENT ACTION WITH REGARD TO FIRSTENERGY NUCLEAR FACILITY OPERATIONS IN OHIO AND PENNSYLVANIA DATED JANUARY 8, 2019

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PBuckberg, NRR

BBroadus, NRR

JColeman, RIII

ADAMS Accession Nos.

Package ML18094A605;

Letter ML18309A228;

PROPOSED 2.206 DD ML18309A189

(*) By email

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