

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-334, 50-412, 72-1043, 50-346, 72-14, 50-440, and 72-69;**

**NRC-2019-0137]**

**FirstEnergy Nuclear Operating Company;**

**Beaver Valley Power Station, Unit Nos. 1 and 2, and ISFSI;**

**Davis-Besse Nuclear Power Station, Unit No. 1; and ISFSI;**

**Perry Nuclear Power Plant, Unit No. 1; and ISFSI;**

**Consideration of Application Containing Sensitive Unclassified Non-Safeguards  
Information Regarding Approval of Transfer of Licenses and Conforming  
Amendments**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by FirstEnergy Nuclear Operating Company (FENOC), acting on behalf of itself and FirstEnergy Nuclear Generation, LLC (FENGen) (together, the Applicants). The application seeks an NRC order consenting to the approval of the transfer of License No. DPR-66 and License No. NPF-73 for Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and BVPS-2, respectively); License No. NPF-3 for Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS); License No. NPF-58 for Perry Nuclear Power Plant, Unit No. 1 (PNPP), and their respective generally licensed independent spent fuel storage installation facilities (ISFSIs).

The NRC is also considering amending the respective facility operating licenses for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** Comments must be filed by July 29, 2019. A request for a hearing must be filed by July 17, 2019. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2019-0137**. Address questions about NRC dockets to Jennifer Borges; telephone 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **E-mail comments to:** [Hearingdocket@nrc.gov](mailto:Hearingdocket@nrc.gov). If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677. For additional direction on obtaining information and

submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Bhalchandra K. Vaidya, telephone: 301-415-3308, e-mail: [Bhalchandra.Vaidya@nrc.gov](mailto:Bhalchandra.Vaidya@nrc.gov) or Joel S. Wiebe, telephone: 301-415-6606, e-mail: [Joel.Wiebe@nrc.gov](mailto:Joel.Wiebe@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

**A. Obtaining Information**

Please refer to Docket ID **NRC-2019-0137** and facility name, unit numbers, plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2019-0137**.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. Some documents referenced are located in the NRC’s ADAMS Legacy Library. To obtain these documents, contact the NRC’s PDR for assistance.

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

## **B. Submitting Comments**

Please include Docket ID **NRC-2019-0137** and facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## **II. Introduction**

The NRC is considering the issuance of an order under section 50.80 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the transfer of control of License No. DPR-66 and License No. NPF-73 for BVPS-1 and BVPS-2, License No. NPF-3 for DBNPS, License No. NPF-58 for PNPP, and their respective generally licensed ISFSIs, currently held by FENOC and FENGen. FirstEnergy Corporation (FE) is the parent company of First Energy Solutions (FES) and FENOC, which are wholly-owned subsidiaries. The facilities are owned by FENGen, which in turn, is a wholly-

owned subsidiary of FES. The facilities are operated by FENOC. The NRC is also considering amending the facility operating licenses for administrative purposes to reflect the proposed transfer.

On March 31, 2018, FES, FENOC, FENGen, and FES's other subsidiaries, filed voluntary petitions for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (Bankruptcy Court). By letter dated April 2, 2018 (ADAMS Accession No. ML18094A661), in accordance with 10 CFR 50.54(cc)(1), FENOC notified the NRC of the bankruptcy filing. The application states that the proposed license transfers would support the emergence from bankruptcy of the Applicants, along with FES and other affiliated companies that are currently debtors in the bankruptcy process, pursuant to the bankruptcy plan submitted to the Bankruptcy Court.

Under the bankruptcy plan, if confirmed, and following approval of the proposed transfer of control of the licenses, a new privately-held holding company would be formed with shares initially held by certain current creditors of one or more of FES, FENOC, FENGen, or FirstEnergy Generation, LLC (FG) (a sister company of FENGen holding fossil fuel generation assets), and management of the new holding company. The name of the new holding company is yet to be determined; therefore, it is described in the application using the generic name, "New HoldCo." Additionally, the Applicants, FENOC and FENGen, would be reorganized and their names would change. Therefore, in the application, the reorganized NRC licensees are described using the generic names, "OpCo" for reorganized FENOC, and "OwnerCo" for reorganized FENGen. Following approval of the proposed transfer, OwnerCo would be the licensed owner of BVPS-1, BVPS-2, DBNPS, and PNPP, and their respective generally-licensed ISFSIs, and OpCo would be the licensed operator of the facilities. OpCo and OwnerCo would

become wholly-owned subsidiaries of New HoldCo. The application states that the Applicants will promptly inform the NRC of the new entity names through a supplement to the application once that information has been identified.

After emergence from bankruptcy, OpCo, OwnerCo, reorganized FG, and FES's other subsidiaries would no longer be affiliated with FE or FES. Instead, they would be sister companies, wholly-owned by New HoldCo.

No single entity is expected to own a majority of New HoldCo's outstanding voting shares or exercise control over New HoldCo.

On March 28, 2018, FES and FENOC verbally notified the NRC that they intended to shutdown all four of their operating nuclear power plants. The first unit scheduled for deactivation is DBNPS by May 31, 2020, followed by PNPP and BVPS-1 by May 31, 2021, and BVPS-2 by October 31, 2021. By letter dated April 25, 2018 (ADAMS Accession No. ML18115A007), FENOC notified the NRC of the planned permanent cessation of operations for the facilities. Upon emergence from bankruptcy, the facilities would continue to operate until the announced deactivation dates. If a scenario arises during the pendency of the application in which any of the facilities would be expected to operate beyond the planned deactivation date, the Applicants stated that they will notify the NRC and make requisite filings and supplements to the application.

The application states that the bankruptcy plan must be approved by the creditors and confirmed by the Bankruptcy Court, and that under the terms of the plan, NRC approval is required before the Applicants can reorganize and emerge from bankruptcy.

No physical changes to BVPS-1, BVPS-2, DBNPS, and PNPP, or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held

and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

For further details with respect to this application, see the application dated April 26, 2019, as supplemented on May 31, 2019 (ADAMS Accession Nos. ML19116A087 and ML19151A531, respectively).

### **III. Opportunity to Comment**

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

### **IV. Opportunity to Request a Hearing and Petition for Leave to Intervene**

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web Site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.



As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's

admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited

appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### **V. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web Site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID

certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

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

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web Site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at

1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

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

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available

documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

**VI. Access to Sensitive Unclassified Non-Safeguards Information for  
Contention Preparation**

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Mr. Thomas A. Lentz, Manager, Nuclear Licensing and Regulatory Affairs, at 330-315-6810 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland, this 24<sup>th</sup> day of June 2019.

For the Nuclear Regulatory Commission.

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Bhalchandra K. Vaidya, Project Manager,  
Plant Licensing Branch III,  
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