

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
FIRSTENERGY NUCLEAR OPERATING)	
COMPANY)	
FIRSTENERGY NUCLEAR GENERATION,)	
LLC)	
)	
Beaver Valley Power Station, Unit Nos. 1)	Docket Nos. 50-334, 50-412, and 72-1043
and 2 and its generally licensed ISFSI)	License Nos. DPR-66 and NPF-73
)	
Davis-Besse Nuclear Power Station,)	Docket Nos. 50-346 and 72-14
Unit No. 1 and its generally licensed ISFSI)	License No. NPF-3
)	
Perry Nuclear Power Plant, Unit No. 1)	Docket Nos. 50-440 and 72-69
and its generally licensed ISFSI)	License No. NPF-58

ORDER APPROVING DIRECT AND INDIRECT TRANSFERS OF CONTROL
OF LICENSES AND DRAFT CONFORMING LICENSE AMENDMENTS

I.

FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC (FENGen) (together, the Applicants) operate and own, respectively, Beaver Valley Power Station (BVPS), Unit Nos. 1 and 2, and its generally licensed independent spent fuel storage installation (ISFSI); Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS) and its generally licensed ISFSI; and Perry Nuclear Power Plant, Unit No. 1 (PNPP) and its generally licensed ISFSI (together, the Facilities). Specifically, they are co-holders of:

- (1) Renewed Facility Operating License Nos. DPR-66 and NPF-73 for BVPS, Units 1 and 2, respectively, located in Beaver County, Pennsylvania;
- (2) Renewed Facility Operating License No. NPF-3 for DBNPS, located in Ottawa County, Ohio; and

(3) Facility Operating License No. NPF-58 for PNPP, located in Lake County, Ohio.

II.

By application dated April 26, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19116A087), as supplemented by letters dated May 31, 2019; August 2, 2019; August 29, 2019; September 25, 2019 (two submissions); and October 17, 2019 (ADAMS Accession Nos. ML19151A531, ML19214A100, ML19241A462, ML19268A053, ML19268B133, and ML19290D432, respectively), the Applicants requested, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Section 50.80, "Transfer of licenses," of Title 10 of the *Code of Federal Regulations* (10 CFR), that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the transfer of licenses. Specifically, the Applicants requested a direct transfer of operating authority for the Facilities from FENOC to an as-yet unnamed company, herein identified as OpCo; a direct transfer of ownership of the Facilities from FENGen to an as-yet unnamed company, herein identified as OwnerCo; and an indirect transfer of ownership of the Facilities to an as-yet unnamed parent company, herein identified as New HoldCo (FirstEnergy Corp. is currently the ultimate parent company). The Applicants also requested the NRC's prior written consent and issuance of conforming amendments to the licenses pursuant to 10 CFR 50.80 and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit."

On March 31, 2018, FirstEnergy Solutions Corp. (FES), together with 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 proposed direct and indirect 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 Eighth Amended Joint Plan of Reorganization (the Bankruptcy Reorganization Plan) filed with the Bankruptcy Court on October 11, 2019, and the Revised Eighth Amended Plan filed with the Bankruptcy Court on October 14, 2019, and confirmed by the Bankruptcy Court on October 16, 2019, as noted in the Applicants' supplemental letter dated October 17, 2019.

Under the Bankruptcy Reorganization Plan, at emergence from bankruptcy, a new privately-held holding company, New HoldCo, will 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. Both OpCo and OwnerCo will become wholly-owned subsidiaries of New HoldCo. New HoldCo will also have ultimate ownership of FES's existing non-nuclear generating assets as well as the retail and wholesale load-serving business.

A notice of the application and opportunity to request a hearing and to comment on the application was published in the *Federal Register* (FR) on June 27, 2019 (84 FR 30775). In response, on July 17, 2019, the Environmental Law & Policy Center filed a hearing request. The hearing request is currently pending before the Commission. The NRC did not receive any comments on the application.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, 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. Upon review of the information in the application for license transfer, as supplemented, and other information before the Commission, the NRC staff has determined that OpCo and OwnerCo are qualified to hold the licenses to the extent proposed to permit the transfer of the licenses from FENOC and FENGen to OpCo and OwnerCo, respectively, and that the transfers of the licenses, as described in the application, are otherwise consistent with applicable

provisions of law, regulations, and orders issued by the NRC pursuant thereto, subject to the conditions set forth below.

Upon review of the information in the application for conforming amendments, as supplemented, the NRC staff has determined that:

(1) The application for conforming license amendments 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.

(2) The Facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission.

(3) There is reasonable assurance that the activities authorized by the amendments 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.

(4) The issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

(5) The issuance of the amendments is 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 staff safety evaluation dated the same date as this Order, which is available at ADAMS Accession No. ML19305B131 (non-proprietary).

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, IT IS HEREBY ORDERED that the application for license transfers, as described herein, is approved for BVPS, Unit 1, BVPS, Unit 2, DBNPS, and PNPP, and the respective ISFSIs, subject to the following conditions.

1. OwnerCo and OpCo shall provide satisfactory documentary evidence to the Director of the NRC Office of Nuclear Reactor Regulation that, as of the date of the license transfer, the licensees reflected in the amended licenses have obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 and 10 CFR 50.54(w).
2. On or by the closing date of the license transfer transaction, the Applicants shall take all necessary steps to ensure that the provisional trust agreement submitted on September 25, 2019, to address the shortfall identified for BVPS, Unit 1 is implemented and maintained consistent with the safety evaluation supporting this Order.
3. The NRC staff's approval of these license transfers is subject to the Commission's authority to rescind, modify, or condition the approved transfers based on the outcome of any post-effectiveness hearing on the license transfer application.

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed transfer actions, the Applicants shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 5 business days prior to the date of the closing of the transfer. Should the proposed transfer not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may be extended by order. The conditions of this Order may be amended upon application by the Applicants and approval by the Director of the Office of Nuclear Reactor Regulation.

IT IS FURTHER ORDERED that consistent with 10 CFR 2.1315(b), the license amendments that make changes, as indicated in Enclosures 2 through 5 to the letter transmitting this Order, to reflect the subject transfers, are approved. The amendments shall be issued and made effective within 30 days of the date when the proposed transfer actions are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated April 26, 2019, as supplemented by letters dated May 31, 2019; August 2, 2019; August 29, 2019; September 25, 2019 (two submissions); and October 17, 2019, and the NRC safety evaluation dated the same

date as this Order, which are available for public inspection at the NRC's Public Document Room (PDR) located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 2nd day of December, 2019.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Benner, Deputy Director,
Office of Nuclear Reactor Regulation.