

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	Docket No. 50-440-LA
)	NRC-2020-0188
Energy Harbor Nuclear Corp.; Energy)	
Harbor Nuclear Generation LLC;)	December 18, 2020
)	
(Perry Nuclear Power Plant, Unit No. 1))	

* * * * *

**PETITION OF BEYOND NUCLEAR AND CITIZEN POWER, INC. FOR LEAVE TO
INTERVENE IN PERRY NUCLEAR POWER PLANT LICENSE AMENDMENT
PROCEEDING AND REQUEST FOR A HEARING**

Now come Beyond Nuclear, a not-for-profit organization located in Takoma Park, Maryland, on behalf of certain of its members (“Beyond Nuclear” or “BN”), and Citizen Power, Inc., a Pittsburgh, Pennsylvania-based not-for-profit organization (“Citizen Power” or “CP”) (collectively, “Petitioners”), and hereby request leave to intervene and for a public hearing in the matter of the proposed license amendment for Perry Nuclear Power Plant (“PNPP”), noticed at 85 FR 61036 (9/29/2020) (publication of EA/FONSI); and in a certain letter from Scott Wall (NRC) to Frank R. Payne (Energy Harbor Nuclear Corp), “Perry Nuclear Power Plant, Unit No. 1 - Issuance Of License Amendment No. 191 Regarding Recapture Of Low-Power Testing Time (EPID L-2020-LLA-0053)” (October 8, 2020) (ADAMS ML20216A354). The NRC has not as yet published notice in the Federal Register of the issuance of the license amendment, contrary to its regulations and standard practice, and consequently, Petitioners are filing to intervene now to protect the record.

In support of their Request for Hearing and Petition to Intervene, Petitioners further state as follows:

1. Beyond Nuclear is a not-for-profit public policy, research, education organization based in Takoma Park, Maryland that advocates the immediate expansion of renewable energy sources to replace commercial nuclear power generation. Beyond Nuclear has over 12,000 members of whom a number reside, work and recreate within the fifty (50) mile Emergency Planning Zone for the Perry Nuclear Power Station, Unit 1 (hereinafter referred to as “PNPP”). Beyond Nuclear herewith provides the declarations of five of its members, Connie Kline, Ronald Shissler, Janet Jodlowski, William Brotzman¹ and Ronald O’Connell, all of whom live within a 17-mile radius of PNPP and all of whom have designated Beyond Nuclear to intervene to protect their interests in physical health and safety, the health and safety of their family members, their real property, and the health and stability of the physical environment proximate to PNPP. Beyond Nuclear’s address is 7304 Carroll Ave., #182, Takoma Park, MD 20912, phone (301) 270-2209, www.beyondnuclear.org.

2. Citizen Power, Inc. is a not-for-profit public policy, research, education and advocacy organization based in Pittsburgh, Pennsylvania, working on behalf of those less advantaged and those without a voice, to provide and further improve vital human services. Citizen Power works to promote the increased use of renewable energy and energy-efficiency technologies. Citizen Power’s President resides, works and recreates within the Emergency Planning Zone for the PNPP. Citizen Power herewith provides the declaration of its President, David Hughes, who lives 4 miles from PNPP and has designated Citizen Power, Inc. to intervene to protect his interests in physical health and safety, the health and safety of his family members, and

¹Mr. Brotzman’s declaration is not as of this filing digitally available, and will be filed later to supplement this Petition.

protection of real property owned by him, as well as to protect the health and stability of the physical environment proximate to PNPP. The office of Citizen Power is located at 4037 Ludwick St., Pittsburgh, PA 15217, Phone: (412) 421-4163, info@citizenpower.com, citizenpower.com.

I. STANDING

A. Legal Basis for Standing

3. Pursuant to 10 CFR § 2.309, a request for hearing or petition for leave to intervene must address (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

4. In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) she, he or it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (*e.g.*, the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999).

5. An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). An organization seeking representational standing must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *See, e.g., Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995); *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-48 (1979); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-97 (1979). Regarding the preference for an affidavit, see *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 & n.4 (1999); *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 1), LBP-96-1, 43 NRC 19, 23 (1996).

B. Petitioners Have Demonstrated Classic Proximity Standing

6. Standing to participate in this proceeding is demonstrated by the proximity standing set forth in the declarations of the individuals annexed to this Petition. All individual Petitioners, in turn, have authorized the organizational Petitioners Beyond Nuclear or Citizen Power to represent their interests in this proceeding.

7. Because they live near the PNPP site, *i.e.*, within 50 miles, the individually-named Petitioners have presumptive standing by virtue of their proximity to the PNPP. *Florida Power &*

Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001). In an operating license amendment proceeding, a petitioner can base his or her standing upon a combination of residence or visits near the plant and a showing that the proposed action entails an increased potential for offsite consequences.

Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-08-18, 68 NRC 533, 541 (2008). Petitioners may have standing if they reside close enough to a planned project so that there is reasonable apprehension of injury. *Hydro Resources, Inc.*, *supra*.

8. Because PNPP seeks to extend the duration of its operating license, there is an increased potential for offsite consequences if for no other reason than that the power plant will be at operational criticality for a longer time than presently allowed by license. Also, age-related degradation risks will increase.

9. The declarations proffered with this Petition are from residents and property owners who live from 4 to 17 miles from PNPP. Because all are well within the 50- mile presumptive radius for legal standing and there is an increased potential for offsite consequences, Connie Kline, Ronald Shissler, Janet Jodlowski, William Brotzman, Ronald O'Connell and David Hughes have successfully demonstrated proximity standing.

II. CONTENTIONS

10. PNPP seeks an operating license amendment to extend the operating license for 7.7 months. Petitioners' *locus standi* is based on injury, causation and redressability. They request to be made a party to the proceeding because (1) extended operation of the nuclear reactor at PNPP

beyond its current March 2026 license terminus presents a tangible and particular risk of harm, admitted by PNPP, to the health and well-being of members living within 50 miles of the site, (2) the NRC has initiated proceedings for a license amendment to extend that terminus date, the granting of which would directly affect the named members and other individuals, and (3) the Commission is the sole agency with the power to approve, to deny or to modify a license to operate a commercial nuclear power plant. If the PNPP license is amended without first resolving the Petitioners' concerns, PNPP may operate unsafely and pose an undue and unacceptable risk to the environment and jeopardize the health, safety and welfare of the Petitioners' members who live, recreate and conduct their business in the vicinity of the nuclear power plant.

11. A license amendment is authorization from the NRC to continue operation of a nuclear power plant at a specific site under changed or modified terms and conditions. Before issuing the license amendment, the NRC staff must complete safety and environmental reviews of the application. The license amendment must comply with provisions of the Atomic Energy Act, the National Environmental Policy Act, NRC regulations and all applicable laws.

12. Petitioners maintain that the safety and environmental reviews produced by the NRC Staff as the basis for extending the operational life of PNPP for 7.7 months are not legally adequate. The contentions are adequately stated. The contention rule may not be used as a "fortress to deny intervention." *Matter of Duke Energy Corp. (Oconee Nuclear Power Plant)*, 49 NRC at 335 (quoting *Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, 8 AEC 13, 20-21 (1974), *rev'd in part*, CLI-74-32, 8 AEC 217 (1974), *rev'd in part*, *York Committee for a Safe Environment v. N.R.C.* 527 F.2d 812 (D.C. Cir. 1975)). There is no requirement that the substantive case be made at the contention stage. *Matter of Entergy Nuclear*

Generation Co., et al. (Pilgrim Nuclear Power Station), 50-293-LR (ASLB Oct. 16, 2006), 2006 WL 4801142 at (NRC) 85 (quoting *Oconee*, 49 NRC at 152).

A. Relevant History and Context of Perry Nuclear Power Plant

13. Perry Nuclear Power Plant has been operating commercially for more than 34 years. In 2019, its then-parent corporation, FirstEnergy Nuclear Operating Company (FENOC), then-owner of the PNPP nuclear power plant operation license, emerged from a Chapter 11 corporate bankruptcy along with the owner of PNPP as a generating facility, FirstEnergy Nuclear Generation, LLC (FENGen), to transfer the license and facility ownership to Energy Harbor Nuclear Corporation and Energy Harbor Nuclear Generation LLC, respectively.²

14. In 2018 and 2019, the then-owner of PNPP, FirstEnergy Solutions, underwent bankruptcy ostensibly because of its inability to sustain operations at a number of its coal-fired and nuclear power plants, including PNPP. During much of this time, the Ohio General Assembly considered, and ultimately House Bill 6 was signed into law in July 2019. It among other things set up a scheme of corporate welfare to give Perry Nuclear Power Plant and Davis-Besse Nuclear Power Plant \$150 million annually between 2021 and 2027, raising the funds through charges paid by residential, commercial and industrial electric customers.³

15. In July 2020, a federal grand jury indicted then-Ohio House Speaker Larry

²Letter from Scott Wall (NRC) to Frank R. Payne (Energy Harbor Nuclear Corp), “Perry Nuclear Power Plant, Unit No. 1 - Issuance Of License Amendment No. 191 Regarding Recapture Of Low-Power Testing Time (EPID L-2020-LLA-0053)” (October 8, 2020) (ML20216A354); “Order Approving Direct and Indirect Transfers of Control of Licenses and Draft Conforming License Amendments,” *FirstEnergy Nuclear Operating Company et al.*, Docket Nos. 50-440 and 72-69, License No. NPF-58 (NRC Office of Nuclear Reactor Regulation, December 2, 2019).

³https://www.news-herald.com/news/hearings-held-for-ohio-house-bill-that-would-delay-collection-of-nuclear-plant-subsidies/article_fd77c17c-366a-11eb-a439-133817664df4.html

Householder; ex-Republican State Chair Matt Borges; political consultant Jeff Longstreth; and lobbyists Juan Cespedes (for FirstEnergy) and Neil S. Clark, on corruption charges. The grand jury alleged that, using \$60 million-plus in so-called “dark money,” the five men won House Bill 6’s passage in the Legislature using bribery of many legislators.⁴ Cespedes and Longstreth have since pled guilty.⁵

16. Ohio Governor Michael DeWine, who signed HB 6, has since called for repeal. But the Ohio General Assembly, despite much publicity and controversy, hasn’t repealed it.⁶

17. In late November 2020, the FBI raided the Columbus, Ohio home of then-Public Utilities Commission of Ohio (“PUCO”) Chairman Sam Randazzo, a DeWine appointee.⁷ Randazzo hasn’t been charged with any wrongdoing, but there is strong speculation that the raid is connected to FirstEnergy’s disclosure earlier in that week of a “purported consulting agreement” FirstEnergy had with “an entity associated” with an unnamed person later appointed to be an Ohio utility regulator.⁸ On November 20, 2020, Randazzo resigned as PUCO chair.

⁴<https://www.cleveland.com/open/2020/07/ohio-house-speaker-larry-householder-four-others-for-mally-charged-by-grand-jury-in-60m-bribery-case.html>

⁵ <https://www.justice.gov/usao-sdoh/pr/political-strategist-lobbyist-each-plead-guilty-federal-public-corruption-racketeering>

⁶<https://www.cleveland.com/opinion/2020/11/hb-6-stall-reveals-how-ohio-politics-is-really-just-a-bout-maintaining-the-status-quo-thomas-suddes.html>

⁷*Id.*

⁸FirstEnergy Corp.’s SEC 10-Q filing for the period ending September 30, 2020 notably states, respecting the “Internal Investigation Relating to *United States v. Larry Householder, et al.*”:

“As previously disclosed, a committee of independent members of the Board of Directors is directing an internal investigation related to ongoing government investigations. In connection with FirstEnergy’s internal investigation, such committee determined on October 29, 2020, to terminate FirstEnergy’s Chief Executive Officer, Charles E. Jones, together with two other executives: Dennis M. Chack, Senior Vice President of Product Development, Marketing, and Branding; and Michael J. Dowling, Senior Vice President of External Affairs. Each of these terminated executives violated certain

18. The Ohio General Assembly currently is in lame-duck session and there appears to be strong consideration of House Bill 798,⁹ which would delay collection of the bailout fees for PNPP and Davis-Besse for one year as lawmakers struggle to find a way to repeal and replace House Bill 6, the law at the heart of an alleged \$61 million alleged bribery scheme.¹⁰

19. By letter dated April 25, 2018 (ADAMS ML18115A007), as the battle over the billion-dollar-plus FirstEnergy bailout was in high dudgeon, FENOC communicated to the NRC its intention to cease operations at PNPP in May 2021. When HB 6 was passed in 2019 – once the bailout was guaranteed – FirstEnergy withdrew the shutdown notice. Letter, FirstEnergy to NRC, July 26, 2019 (ADAMS ML19207A097).¹¹

FirstEnergy policies and its code of conduct. These executives were terminated as of October 29, 2020. Such former members of senior management did not maintain and promote a control environment with an appropriate tone of compliance in certain areas of FirstEnergy’s business, nor sufficiently promote, monitor or enforce adherence to certain FirstEnergy policies and its code of conduct. Furthermore, certain former members of senior management did not reasonably ensure that relevant information was communicated within our organization and not withheld from our independent directors, our Audit Committee, and our independent auditor. Among the matters considered with respect to the determination by the committee of independent members of the Board of Directors that certain former members of senior management violated certain FirstEnergy policies and its code of conduct related to a payment of approximately \$4 million made in early 2019 in connection with the termination of a purported consulting agreement, as amended, which had been in place since 2013. The counterparty to such agreement was an entity associated with an individual who subsequently was appointed to a full-time role as an Ohio government official directly involved in regulating the Ohio Companies, including with respect to distribution rates. At this time, it has not been determined if the payments were for the purposes represented within the consulting agreement.”

⁹<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-798>

¹⁰<https://www.cincinnati.com/story/news/politics/2020/12/01/ohio-legislature-nuclear-subsidies-delay-fees-house-bill-6/6476160002/>

¹¹“On March 28, 2018, FirstEnergy Solutions Corp. (FES), the parent company of FirstEnergy Nuclear Generation, LLC (FENGen) and FirstEnergy Nuclear Operating Company (FENOC), announced plans to retire the Davis-Besse Nuclear Power Station (DBNPS), Unit No.1; the Beaver Valley Power Station (BVPS), Unit Nos. 1 and 2; and the Perry Nuclear Power Plant (PNPP), Unit No. 1 due to severe economic challenges. In correspondence dated April 25, 2018 (Accession No. ML18115A007), and pursuant to 10 CFR 50.82(a)(1)(I) and 10 CFR 50.4(b)(8), FENOC certified to the U.S. Nuclear

20. 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). Pursuant to the Eighth Amended Joint Plan of Reorganization¹² 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, the NRC on December 2, 2019, recognized a new privately-held holding company, New HoldCo and a new operating company, OpCo, as having ownership and operational control of PNPP, including the retail and wholesale electricity load-serving business. Soon, Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC took over these responsibilities.

21. This continuing scandal severely clouds the financial future of FirstEnergy and its subsidiary owners of PNPP, and it further poses serious implications for the prospective safety and hazard-free operation of PNPP. But the September 29, 2020 EA/FONSI and October 8, 2020

Regulatory Commission (NRC) that FES intended to permanently cease power operations at DBNPS by May 31, 2020; BVPS Unit No. 1 and PNPP by May 31, 2021; and BVPS Unit No. 2 by October 31, 2021.

On July 23, 2019, the Ohio General Assembly passed the Ohio Clean Air Program, which contains provisions for preserving Ohio's nuclear generation. The Ohio Governor signed the bill into law on July 23, 2019. Based on the Ohio Clean Air Program, FES is reversing its decision to permanently cease operations at its Ohio facilities, DBNPS and PNPP. Therefore, FES formally withdraws its "Certification of Permanent Cessation of Power Operations" for DBNPS and PNPP."

¹²<https://www.docketbird.com/court-documents/Energy-Harbor-LLC-and-Pleasants-Corp/Order-Confirming-the-Eighth-Amended-Joint-Plan-of-Reorganization-of-FirstEnergy-Solutions-Corp-et-al-Pursuant-to-Chapter-11-of-the-Bankruptcy-Code-Signed-on-10-16-2019-RE-related-document-s-3278-Amended-Plan-bhemi-crt/ohnb-5:2018-bk-50757-03283>

Also, see <https://cases.primeclerk.com/FES/Home-DocketInfo?DocAttribute=3744&DocAttrName=PLANDISCLOSURESTATEMENT>

“Issuance of License” with Safety Evaluation (ADAMS ML20216A354) mention none of these enormous controversies of political economy, nor do they examine what implications there may be for the safe prospective operation of PNPP for 7.7 months beyond the termination of PNPP’s operating license. The grossly inadequate informational basis for the NRC’s findings under NEPA and the Atomic Energy Act are at issue in this Petition. Besides the preoccupation on repeal of HB 6 that has been forced upon the Ohio General Assembly as the scandalous details have emerged for months, a flood of litigation is ongoing.¹³

22. It may well be that PNPP’s owners are hedging their bets. By letter dated May 13, 2020 (ADAMS ML 20134H987), Energy Harbor Nuclear Corp. notified the NRC that it intends to apply for PNPP license renewal in the third quarter of 2023, only 3 years before expiration, which requires an exemption from the 5-year advance notification requirement of 10 CFR §2.109(b). Certainly the 7.7 month extension contributes to the time allowed for PNPP to ascertain whether PNPP’s operating characteristics, productivity, income-producing capability and overall cost-benefit model continue to make sense to continue operations. Energy Harbor is surely concerned about the economic viability of PNPP, even with the HB 6 bailout. The presence of such concern should be investigated as part of the license amendment inquiry.

¹³The litigations include recurring attempts by the Ohio Attorney-General to divert ratepayer surcharges from being paid to Energy Harbor, <https://www.cleveland.com/open/2020/11/ag-dave-yost-files-new-lawsuit-to-stop-collection-of-hb6-nuclear-bailout-money.html>; an October 2020 public interest lawsuit to reopen the bankruptcy, <https://www.cleveland.com/open/2020/10/court-motion-raises-question-of-reopening-firstenergy-solutions-bankruptcy-ruling.html>; a November 2020 public interest law firm’s request to reopen the PUCO cases over which the disgraced Chairman Randazzo presided, <https://www.daytondailynews.com/news/environmental-group-wants-puco-to-reconsider-cases-after-puco-chair-resigned/DMA4Q3BECNFOVCKDIABX6DGZWY/>; and an October 2020 suit brought by the cities of Cincinnati and Columbus to block collection of HB 6 surcharges, <https://www.cleveland.com/open/2020/10/columbus-cincinnati-sue-to-block-house-bill-6-nuclear-bailout-fees-citing-corruption-probe.html>

B. Contention No. 1: The EA/FONSI is inadequate and violates the National Environmental Policy Act.

1. Legal Standards Imposed by NEPA

23. The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-37, requires the NRC to examine environmental impacts that could be caused by its discretionary decision to allow a license amendment granting the proposed 7.7 month operating extension. The NRC effectively admitted that there will be environmental impacts from the operating extension in the Environmental Assessment/Finding of No Significant Impact (“EA/FONSI”) that was issued as part of the basis for granting the amendment.

24. NEPA obliges a federal agency to consider every significant aspect of the environmental impact of a proposed action and to ensure that the federal agency will inform the public that it has indeed considered environmental concerns in its decision-making process.¹⁴ *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983); *see also* 42 U.S.C. § 4332(2)© (identifying requirements of an EIS).

25. Although the NRC staff minimizes the 7.7 month license extension at the heart of this amendment request as routine, even an operating license amendment that does not modify any systems, structures, or components (SSCs) but which extends the license term to recapture time lost during low power operations represents a significant amendment, and not merely a

¹⁴Petitioners object to any NRC reliance on, or application of, President Trump’s June 4, 2020 “Executive Order on Accelerating the Nation’s Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities” on the ground that it is unconstitutional, violates NEPA, violates the federal Administrative Procedure Act, violates the Atomic Energy Act and the Nuclear Waste Policy Act, and comprises an unlawful rulemaking. Petitioners also object to any reliance on, or application of the Council on Environmental Quality’s (“CEQ”) new NEPA regulations issued July 16, 2020 because they are unconstitutional, violate NEPA and violate the Administrative Procedure Act. The objectionable proposals of the CEQ are “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

ministerial administrative change, notwithstanding prior review during the operating license proceeding of such SSCs. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-94-35, 40 NRC 180, 188 (1994).

26. For a petitioner to raise an admissible contention with respect to a Finding of No Significant Impact (FONSI), the petitioner need not show that there *will* be a significant environmental impact as a consequence of the proposed action. The petitioner “must ‘allege[] facts which, if true, show that the proposed project *may* significantly degrade some human environmental factor.’” (Emphasis in original). *U.S. Army* (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438, 458 (2006).

2. The need for the proposed action is unsupported

27. The Need for the Proposed Action section states only that “The proposed action would allow the licensee to recapture the approximate 7.7-month period of low-power operation and extend the license expiration date to November 7, 2026” and that the proposed action “is consistent with NRC policy established in the Staff Requirements Memorandum (SRM) for SECY-98-296, ‘Staff Requirements Agency Policy Regarding Licensee Recapture of Low-Power Testing or Shutdown Time for Nuclear Power Plants,’ dated March 30, 1999 (ADAMS Accession No. ML20213A739) and SECY-98-296, ‘Agency Policy Regarding Licensee Recapture of Low-Power Testing or Shutdown Time for Nuclear Power Plants,’ dated December 21, 1998, available at (ADAMS Accession No. ML992870025).”

28. This is not a proper statement of the need for the project. Essentially the EA/FONSI says merely that PNPP wants to recapture 7.7 months of operations time and that such would be consistent with NRC policy. But the need described in the SECY-98-296 memo, at Grand Gulf

Nuclear Station, is factually dissimilar from the facts being rationalized by the policy at PNPP. Grand Gulf was issued a low-power operating license (LPOL) to operate up to 5-percent rated power. After technical specification and startup testing issues were resolved, the Commission amended the LPOL two years and two months later to allow operation up to 100-percent rated power. Following a court challenge to the amendment, the NRC issued a separate Full POL to GGNS. *Mississippi Power & Light Co., et al.* (Grand Gulf Nuclear Station, Unit 1), CLI-84-19, 20 NRC 1055 (1984). On November 1, 1984, the NRC staff issued GGNS a FPOL with an expiration date of June 16, 2022, 40 years from the date of issuance of the LPOL. The GGNS license extension amendment in 1998 sought a 28.5-month extension of the expiration date of the FPOL to November 1, 2024, 40 years from the date of issuance of the FPOL.

29. Moreover, the standard of SECY-98-296 as expressed in its “Purpose” section states: “To obtain Commission approval of a policy issue concerning recapture of low-power testing or shutdown time for nuclear power plants not in commercial operation because of *unusual, unforeseen, or exigent circumstances.*” (Emphasis added). By contrast, PNPP demonstrated no “unusual, unforeseen, or exigent circumstances.” GGNS was under a LPOL for a full 28.5 months, nearly 2.5 years, about four times longer than the mere 7.7 months in the case of PNPP. Perhaps that extended loss of about 6% of the reactor’s overall licensed time to low power operations, compared with the 1.5% loss to PNPP, is a strikingly different issue when weighed against a 34-year record of typically aging systems and components of a reactor owned by a utility that has just sought bankruptcy reorganization and then has found itself in the crosshairs of a public financing scandal.

30. Additionally, SECY-98-296 acknowledges that:

[T]he staff performed its review on the basis of the effects of aging of safety-related and other structures and components, relative to the licensing basis. The review specifically focused on the adverse effects of aging to ensure that important systems, structures, and components will continue to perform their intended functions during the requested period of recapture. The staff reviewed the effect of the recapture period on the reactor pressure vessel, structures, mechanical equipment, electrical equipment, and quality assurance and maintenance programs, and addressed outstanding safety issues.

31. By comparison, there is no evidence detailed in the PNPP EA/FONSI or Safety Evaluation that such reviews were performed at PNPP, despite the fact that the Perry extension is being issued 34 years into full power operations. GGNS had been operating for less than half that, 16 years, at the time of the recapture request.

32. The purpose and need statement under NEPA is important because the purpose and need statement “necessarily dictates the range of ‘reasonable’ alternatives.” *Carmel-by-the-Sea v. U.S. Dep’t. Of Transp.*, 123 F.3d 1142 (9th Cir. 1997). The definition of purpose and need must be reasonable. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991). There is no way to know if the statement of purpose and need is reasonable unless it is supported by data and evidence. Furthermore, the agency must not accept out of hand the applicant’s statement of purpose and need. *ELPC v. NRC*, 470 F.3d 676, 683 (7th Cir. 2006), quoting *Simmons v. Corps. of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997). The D.C. Circuit warned, in *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190 (D.C. Cir. 1991) that “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality. . . .” Because the only alternatives covered by the EA/FONSI are continued full power operations for an additional 7.7

months, or not, an effective need statement is germane to giving serious scrutiny to the no-action alternative.

33. The questionable sufficiency of the PNPP need statement is exposed by the omission of discussion as to why the proposed action of granting the 7.7 month extension would be preferable to the no-action alternative of not extending operations. The EA concedes the continued potential of probability or consequences of accidents, of polluting effluents being released offsite, and of continued occupational or public radiation exposure throughout the 7.7 month extension. Given the admission of continued environmental harms at more or less the same rate as during the licensed period, “[t]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass'n of U.S. , Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 9 L.Ed.2d 207 (1962)). In the EA/FONSI, the admitted incremental negatives are obscured by careful language and the NRC provides zero justification for the extension other than it ostensibly fits within agency policy (SECY-98-296). The need statement essentially says that the license extension is justified because the applicant wants it and the agency policy superficially seems to allow it. A genuine need statement would account for the additional environmental harms and possible safety implications during the extension and would articulate why they may be traded off for some higher good. That accounting is not present here. This is a defective need statement.

3. The EA/FONSI fails to address whether the original cost-benefit balance for PNPP will be affected by the bailout politics and changes in the financing structure for PNPP

34. PNPP’s owners clearly heralded a marked change in the cost-benefit balance that

originally had justified Perry's construction and operation when in 2018 they notified the NRC of intended early termination of plant operations during the legislative deliberations over HB 6 and then subsequently revoked the notice in 2019 because of the successful passage of the economic bailout of HB 6 into law. The change in PNPP financing to a partial dependence on specially-collected surcharges was a significant change in funding structure. The political milieu that has sprung up in the wake of an enormous alleged bribery scandal over HB 6 and revelations of possibly corrupt business arrangements between a FirstEnergy lobbyist-turned-regulator, combined with the continuing potential for criminal prosecutions and civil lawsuits involving PNPP's owners should have suggested obvious implications to the NRC Staff in compiling the EA/FONSI. But there was no mention of the current turmoil that certainly could have long-lasting economic effects on PNPP, into 2026. Depending on the political and legal outcomes from the many facets of the FirstEnergy alleged bribery scandal, it is possible that PNPP will once again face permanent termination of operations ahead of 2026.

35. NEPA has traditionally encompassed cost-benefit analysis "relevant to the choice among alternatives with different environmental effects." 40 C.F.R. § 1502.22. While the balancing of costs and benefits of a project is usually done in the context of an environmental impact statement (EIS) prepared because the project will have significant environmental impacts, cost-benefit analysis may be necessary for certain federal actions which, of themselves, do not have a significant environmental impact. *Union of Concerned Scientists v. AEC*, 499 F.2d 1069, 1084-85 (D.C. Cir. 1974) (operating license amendment derating reactor power significantly could upset the original cost-benefit balance and, therefore, require that the cost-benefit balance for the facility be reevaluated).

36. Agencies must, to the fullest extent possible, “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal. . . .” 42 U.S.C. § 4322(2)(E); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519-20 (9th Cir. 1992). There must be examination of every alternative within the “nature and scope of the proposed action,” *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982), “sufficient to permit a reasoned choice.”

37. Although the environmental review mandated by NEPA need not include all theoretically possible environmental effects arising out of an action, the NRC is obliged to make reasonable forecasts of the future. *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 48, 49 (1978); *Hydro Res., Inc.*, LBP-04-23, 60 NRC 441, 447 (2004), *review declined*, CLI-04-39, 60 NRC 657 (2004).

38. The EA should have noted and addressed the significant possible financial impacts arising from FirstEnergy’s alleged bribery scandal and its cost-benefit implications for PNPP under NEPA. This failing violates NEPA. Consequently, the NRC Staff should prepare an Environmental Impact Statement instead of a Finding of No Significant Impact.

C. Contention No. 2: The issuance of the license amendment violates the Atomic Energy Act

39. Petitioners incorporate by reference and re-allege as though fully written herein the contents of the foregoing paragraphs 1 through 38.

40. The NRC Staff should have noted and addressed the significant implications for PNPP’s continued financial qualification under the Atomic Energy Act arising from the alleged FirstEnergy bribery scandal, its associated civil and criminal proceedings, and FirstEnergy’s/ Energy Harbor’s indication that it would file an application for an operating license renewal in

2023 instead of 2021 as required by 10 C.F.R. § 2.109.

41. Notably, the NRC Staff here did not perform a review on the basis of the effects of aging of safety-related and other structures and components, relative to the licensing basis, focusing on the adverse effects of aging to ensure that important systems, structures, and components will continue to perform their intended functions during the requested period of recapture.

42. In addition, PNPP was granted various maintenance exemptions and deferrals based on corporate signals during the HB 6 passage fight because of its publicized intentions to shut down PNPP if no bailout bill passed. These exemptions and deferrals¹⁵ are unmentioned and not analyzed in the Safety Evaluation of PNPP underpinning the NRC award of the license amendment. But after the Ohio General Assembly conferred bailout benefits on FES/Energy Harbor, instead of tackling the deferred and exempted projects, the companies bought back \$800

¹⁵10/07/2019, ADAMS ML19280C628 (Perry modifications/regulation rollback) Perry Nuclear Power Plant - Report of Facility Changes, Tests, and Experiments; 6-25-19, ADAMS ML19176A078, Exemption to operate without Inspection: "Deviation from BWRVIP-139 Revision 1-A: BWR Vessel and Internals Project, Steam Dryer Inspection and Flaw Evaluation Guidelines;" 06/04/2019, ADAMS ML19067A021, FENOC Fleet - Exemption from the Requirements of 10 CFR 73.55(p)(1)(I) and (ii) Related to the Suspension of Security Measures in an Emergency or During Severe Weather; 2/25/2019, ADAMS ML19022A324, Perry Nuclear Power Plant, Unit 1 - Issuance of Amendment No. 185 Concerning Extension of Containment Leakage Test Frequency; 9/6/2018, ADAMS ML18178A588, Barbed wire is grandfathered in as a security standard. FENOC Fleet - Individual FR Notice - Notice of Issuance of Exemption re: Exemption from the Definition of Physical Barrier; 8/29/2018, ADAMS ML18130A885, Barbed Wire document: FENOC reactor fleet, including Perry: EA/FONSI related to exemption request for a physical barrier requirement.; 8-29-2018, ADAMS ML18130A849, 1/22/2018 NRC has given permission to FirstEnergy to run its 4 reactors, including Perry, with leaking on Class 2 & 3 Piping; 10/19/2017, ADAMS ML17257A098 Perry Nuclear Power Plant, Unit 1 - Issuance of Amendment Concerning Revisions to the Environmental Protection Plan; 10/16/2017 ADAMS ML17270A030 Alternatives for Repair of Emergency Service Water System Piping. Perry Nuclear Power Plant, Unit 1 - Approval of Alternative to Use ASME Code Case N-513-4 For Repair of Emergency Service Water System Piping.

million worth of their stock.¹⁶

43. The Commission has found sufficient for purposes of standing to challenge a power plant license amendment a claim of insufficient funds to ensure safe operation and shutdown, posing a threat of radiological harm to a co-owner's interest in a facility, as a result of thin capitalization, inability to fund operations because of potential litigation liability, and financial insulation of shareholders from potential costs. *See Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994).

44. Commission regulations recognize that under funding can affect plant safety. Under 10 C.F.R. § 50.33(f)(2), applicants - with the exception of electric utilities - seeking to operate a facility must demonstrate that they possess or have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. Behind the financial qualifications rule is a safety rationale.

45. Although 10 C.F.R. § 50.33(f) says that "An applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license," this regulation does not preclude the NRC Staff, for purposes of conducting its investigation into the propriety of a proposed license amendment, from requesting, and analyzing, financial information which supplements the license amendment request if the Staff believes it may be pertinent to rendering a decision.

46. The NRC is obligated by 10 C.F.R. § 50.92(a) that "[i]n determining whether an

¹⁶<https://www.cleveland.com/open/2020/05/with-ohio-bailout-law-secured-firstenergy-solutions-successor-moves-to-increase-share-buybacks-by-300-million.html>; <https://www.cleveland.com/opinion/2020/05/in-disgusting-turn-shareholders-reap-the-profits-from-ratepayer-payouts-intended-to-keep-ohios-nuclear-plants-afloat.html>

amendment to a license . . . will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses . . . to the extent applicable and appropriate.”

47. The NRC abused its discretion under applicable principles of the Administrative Procedure Act by limiting its inquiry into the premises of the license amendment application so as to ignore the very public, stark political and legal turmoil in which FirstEnergy and Energy Harbor find themselves, and by not applying the financial qualifications considerations which governed the issuance of PNPP’s initial operating license.

III. CONCLUSION

48. The NRC has stunningly abdicated its responsibility under the Atomic Energy Act. Congress has mandated that “the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.” 42 U.S.C. § 2011(b). The NRC license extension completely ignores Ohio’s unprecedented bailout scandal and the potential associated public health and safety implications for Perry, which could worsen the general welfare, cause a decline in the standard of living, and eviscerate free competition in private enterprise.

49. The process resulting in PNPP’s license amendment request fails the legal standards of NEPA and the Atomic Energy Act, NRC regulations and case law interpretations.

WHEREFORE, Petitioners pray the Commission grant them leave to intervene in this license amendment proceeding; that their contentions be admitted for adjudication; that the Commission find that NEPA and AEA standards and requirements have been violated; and that

PNPP be denied the requested license amendment.

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