

July 26, 2000

EA 99-012

Mr. John K. Wood
Vice President, Nuclear
FirstEnergy Nuclear Operating Company
10 Center Road
Perry, OH 44081

SUBJECT: USE OF ALTERNATIVE DISPUTE RESOLUTION TO RESOLVE DIFFERENCES WITH NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$110,000. (NRC Office of Investigations Report Number 3-98-007)

Dear Mr. Wood:

The letter refers to your April 10, 2000, letter requesting the use of Alternative Dispute Resolution(ADR) to resolve differences with the NRC conclusions regarding the Notice of Violation and Proposed Imposition of Civil Penalty issued to you on May 20, 1999. In your letter you indicated that you believe you need a forum for your management team to discuss the relevant details and bases for your actions in this matter.

This Severity Level II violation and proposed imposition of civil penalty in the amount of \$110,000 refers to the investigation completed by the NRC Office of Investigations (OI) at the Perry Nuclear Power Plant owned by Centerior Energy Corporation (now FirstEnergy Nuclear Operating Company (FENOC)) on December 10, 1998. Based upon the evidence developed, OI determined that the Radiation Protection Manager (RPM) discriminated against an RPS for engaging in protected activities within the scope of 10 CFR 50.7. The RPS's protected activities pertained to a July 17, 1997, deposition that the RPS was to give in a Department of Labor (DOL) hearing concerning alleged employment discrimination against another individual at the Perry facility. The RPS had previously indicated to Centerior Energy representatives that his testimony would not be favorable to the Centerior Energy Corporation. The discrimination against the RPS consisted of a July 16, 1997, verbal counseling and the placement of a July 17, 1997, memorandum documenting the verbal counseling in the RPS's section personnel file on July 22, 1997.

As a general matter, the Commission encourages the use of ADR in appropriate circumstances. The use of ADR in the enforcement area, however, particularly in cases of discrimination, involves sensitive issues of Commission policy as well as public perception. Although we believe that it may be possible to successfully address these issues, the Commission's current regulatory process does not specifically provide for the use of ADR in the enforcement arena. We plan to initiate a systematic review of the use of ADR in connection with enforcement actions in the near future, including appropriate rulemaking if warranted.

In regard to the instant matter, FENOC, in the past, declined the opportunity of a Predecisional Enforcement Conference in connection with this enforcement action. Nevertheless, we have considered the information submitted by FENOC on February 25, 2000, in response to the Notice of Violation and Proposed Civil Penalty issued on May 20, 1999. In keeping with our process, we intend to proceed with issuance of an Order Imposing the Civil Penalty in the near future. Should FENOC so desire, the staff is prepared to meet with you before you make a formal request for hearing to discuss the process for the resolution of enforcement matters.

Sincerely,

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R.W.Borchardt, Director
Office of Enforcement

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