

March 29, 2001

EA-00-183

Mr. Robert E. Saunders
President
FirstEnergy Operating Company
76 South Main Street
Akron, OH 44308

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 3-1999-025

Dear Mr. Saunders:

This refers to an investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into an apparent violation on July 14, 1999, of the NRC requirement prohibiting employment discrimination, 10 CFR 50.7, "Employee Protection," at FirstEnergy Operating Company's (FENOC's) Davis-Besse Nuclear Power Plant. The synopsis from the OI report and the NRC staff's summary of the OI investigation were sent to you on August 23, 2000, and a predecisional enforcement conference was held on November 29, 2000, in the NRC Region III office, Lisle, Illinois, to discuss the issue.¹ Additional information was submitted to the NRC on December 18 and 20, 2000, by the attorneys representing the individuals involved in the apparent violation and FENOC, respectively.

Based on information developed during the OI investigation, the NRC concluded that a violation of NRC requirements occurred. In summary, on July 19, 1999, training was held at the Davis-Besse Plant on the prevention of violations of 10 CFR 50.7. Several specific cases of violations of the NRC's regulations were discussed for purposes of illustration. One of the cases discussed during this training was an NRC enforcement action issued to FENOC for its Perry Nuclear Power Plant² and the name of the complainant in the Perry Plant enforcement action was identified along with a suggestion of improper conduct on the employee's part. At the time of this training session (and unknown to most of those attending the training session), the

¹ The complainant was unable to attend the conference; however, the complainant was given the opportunity to review the conference transcript. The complainant declined to provide written comments from the review.

² EA-99-012 concerns a Notice of Violation and Proposed Imposition of Civil Penalty - \$110,000 issued to FENOC at the Perry Plant on May 20, 1999, for a Severity Level II violation of 10 CFR 50.7 after a supervisor counseled a subordinate on July 16, 1997, about testimony the subordinate was to give on July 17, 1997, in a deposition for an employment discrimination proceeding before a U.S. Department of Labor Administrative Law Judge. The supervisor documented the counseling and entered that documentation into file. By letter dated February 25, 2000, FENOC denied the violation and described its corrective action. On August 3, 2000, the NRC issued an Order to FENOC imposing the \$110,000 civil penalty and on October 18, 2000, FENOC requested a hearing to challenge the Order before an NRC Atomic Safety and Licensing Board (ASLB). The matter is currently pending before the ASLB.

complainant in the enforcement action for the Perry Plant had a job application pending at the Davis-Besse Plant, while still employed at the Perry Plant. The improper identification of the complainant constitutes a violation of 10 CFR 50.7. Recognizing that the violation was not deliberate, and after considering that the individuals identifying the complainant during the training session did not hold supervisory or managerial positions within the FENOC organization with responsibility for the oversight of reactor operations, and after consultation with the Director, NRC Office of Enforcement, the violation has been categorized at Severity Level IV in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy).

During and subsequent to the predecisional enforcement conference FENOC provided information indicating that its corrective actions consisted of: (1) several memoranda to supervisors and managers from the Vice President for the Davis-Besse Plant indicating that employment discrimination will not be tolerated; (2) several articles in the site newsletter from the Vice President for the Davis-Besse Plant expressing that employment discrimination will not be tolerated; and (3) letters from you to all employees at FENOC nuclear facilities stating that violations of 10 CFR 50.7 will not be tolerated. Based on the corrective actions taken by FENOC, the fact that the violation was not deliberate and that the individuals performing the training have acknowledged the error in using the complainant's name, the fact that the case and name of the complainant was already publicly available, and the limited actual impact of the violation, the NRC has categorized this matter as a non-cited violation. No response to this letter is required and we will review your corrective actions during a future inspection.

Should you choose to respond to this enforcement action, you should provide a written response citing the basis for your denial to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-001, with copies to the Regional Administrator and the Enforcement Officer, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

John A. Grobe, Director
Division of Reactor Safety

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cc: Roy P. Lessy, Jr., Esq.
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³ OGC No Legal Objection received on 3/22/01 from Susan Chidakel, OGC.

⁴ OE concurrence received on 3/26/01 from Barry Westreich, OE.

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