

October 31, 2003

Mr. William R. Kanda
Vice President - Nuclear, Perry
FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant
P.O. Box 97, A200
10 Center Road
Perry, OH 44081

SUBJECT: PERRY NUCLEAR POWER PLANT, UNIT 1 - ISSUANCE OF SCHEDULAR
EXEMPTION FROM THE REQUIREMENTS OF 10 CFR 50.71(e)(4)
(TAC NO. MC0287)

Dear Mr. Kanda:

By letter dated August 8, 2003, Perry Nuclear Power Plant (PNPP) requested a one-time schedular exemption from the requirements of Title 10 of the *Code of Federal Regulations* (CFR), Part 50, Section 50.71(e)(4) for the submittal of the periodic update to the PPNP Final Safety Analysis Report (FSAR). Specifically, you requested an extension for up to 120 days from September 10, 2003, to January 8, 2004. The requirement to reflect changes up to 6 months prior to the date of filing would still apply.

The Nuclear Regulatory Commission staff has reviewed the information provided in support of your request and finds that granting the one-time schedular exemption from the FSAR update requirements of 10 CFR 50.71(e)(4) is authorized by law, will not present an undue risk to public health and safety, is consistent with the common defense and security, and meets the special circumstances described in 10 CFR 50.12(a)(2)(v). Accordingly, your request is granted. The schedular exemption reschedules the FSAR update submittal date from September 10, 2003, to January 8, 2004.

A copy of this one-time schedular exemption is enclosed and a copy has been forwarded to the Office of the *Federal Register* for publication.

Sincerely,

/RA/

Stephen P. Sands, Project Manager, Section 2
Project Directorate III
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-440

Enclosure: Exemption

cc w/enclosure: See next page

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Perry Nuclear Power Plant, Unit 1

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
FIRSTENERGY NUCLEAR OPERATING COMPANY
PERRY NUCLEAR POWER PLANT
DOCKET NO. 50-440
EXEMPTION

1.0 BACKGROUND

The FirstEnergy Nuclear Operating Company (FENOC/ the licensee) is the holder of Facility Operating License No. NPF-58 which authorize operation of Perry Nuclear Power Plant (PNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located on FENOC's Perry site, which is located in Lake County, Ohio.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.71(e)(4) requires that licensees provide the Nuclear Regulatory Commission (NRC) with updates to the Final Safety Analysis Report (FSAR) annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect changes up to 6 months prior to the date of filing. This regulation would require the submittal of the PNPP FSAR update by September 10, 2003.

The licensee has requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4). The proposed exemption would extend the PNPP submittal date up to

120 days beyond the required filing date of September 10, 2003. The new filing date would be January 8, 2004. The requirement to reflect changes up to 6 months prior to the date of filing would still apply.

3.0 DISCUSSION

By letter dated August 8, 2003, the licensee requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4). Specifically, the licensee requested that it be permitted to delay the required update from September 10, 2003, to January 8, 2004, which is a 120 day delay.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Section 50.12 (a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The requested exemption is administrative and would not affect the plant equipment, operation, or procedures. The FSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the FSAR is updated, the recent changes are documented in the licensee's safety analysis reports and in the Commission's Safety Evaluations for actions requiring prior approval. Changes to a facility or its operation are made through the use of processes which are defined in regulations other than 10 CFR 50.71, such as, 10 CFR 50.59 and 10 CFR 50.54. These regulations provide the basis for evaluating proposed changes and ensuring that the changes will not present an undue risk to the public

health and safety and are consistent with the common defense and security. Because the FSAR update reflects changes after they have been implemented, extending the due date does not present an undue risk to the public health and safety.

While preparing the scheduled submittal, a computer failure occurred affecting the PNPP electronic data management system (EDMS) which resulted in the loss of over 11,000 electronic documents. Updates to the FSAR that were being prepared were among the documents lost. Due to the need to reconstruct the updated FSAR information that was lost, additional time is needed to complete the submittal. The requirement to reflect changes up to 6 months prior to the date of filing would still apply. The exemption is requested to allow adequate time to complete the submittal.

The licensee has made a good faith effort to comply with the regulations for filing in September 2003, in that the updated FSAR submittal was approximately 80 percent completed, however, due to circumstances beyond their control the computer supporting the EDMS failed resulting in the loss of the documents prepared for the submittal. Therefore, the exemption would only provide temporary relief from the applicable regulation and the extension would allow the time necessary for corrective actions and would result in an improved update to the FSAR. Thus, there are special circumstances present which would satisfy the requirements of 10 CFR 50.12(1)(2)(v).

4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants FirstEnergy Nuclear Operating Company, exemption from the requirements of 10 CFR Part 50, Section 50.71(e)(4) for PPNP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 59824).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Ledyard B. Marsh, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation