

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0040]

In the Matter of)
) Docket Nos. 50-334 and 50-412
FirstEnergy Nuclear Operating Co.) License Nos. DPR-66 and NPF-73
(Beaver Valley Units 1 and 2)) EA-12-254

Confirmatory Order Modifying License

I

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Renewed Facility Operating License Nos. DPR-66 and NPF-73 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities," on November 5, 2009. The licenses authorize the operation of the Beaver Valley Power Station, Units 1 and 2 (Beaver Valley, facility), in accordance with conditions specified therein. The facility is located on the licensee's site in Shippingport, Pennsylvania.

II

On December 22, 2005, FENOC notified the NRC of its intent to transition the facility to the National Fire Protection Association (NFPA) Standard 805 fire protection program in accordance with 10 CFR 50.48(c). Under this initiative, the NRC has exercised enforcement discretion for most fire protection noncompliances that are identified during the licensee's transition to NFPA 805, and for certain existing identified noncompliances that reasonably may be resolved at the completion of transition. NFPA 805 was adopted in 10 CFR 50.48(c) as an alternative fire protection rule, which is one path to resolving longstanding fire protection issues.

To receive enforcement discretion for these noncompliances, the licensee must meet the specific criteria, as stated in Section 9.1, "Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)," of the "NRC Enforcement Policy," dated June 7, 2012, and submit an acceptable license amendment application by the date, as specified in the licensee's commitment letter. In a letter dated June 29, 2011, FENOC committed to submit their license amendment application by September 30, 2012.

III

In a public meeting held on August 1, 2012, between the NRC and FENOC, the licensee described its progress for transitioning Beaver Valley to NFPA 805. FENOC also notified the NRC that the development of a high-quality application will require more time than originally anticipated and that they will be unable to meet their previously committed submittal date of September 30, 2012. FENOC expressed a desire to continue enforcement discretion, and a willingness to commit to the new submittal date.

In a letter dated August 29, 2012, FENOC reiterated the current transition strategy for Beaver Valley, and notified the NRC that FENOC will submit its license amendment request (LAR) no later than December 31, 2013. The newly proposed submittal date is beyond the previously committed submittal date and, thus, exceeds FENOC's enforcement discretion (i.e., until September 30, 2012) that was granted to FENOC for certain fire protection noncompliances. However, if provided with adequate justification, the NRC may revise the submittal date through the use of an Order that would continue the enforcement discretion provided in Section 9.1 of the Enforcement Policy.

By letter dated October 18, 2012, the NRC requested that FENOC provide additional justification for the proposed submittal date. This requested information was further discussed

with FENOC in a public teleconference that was held on October 18, 2012. FENOC provided the requested supplemental information in a letter dated November 2, 2012, as discussed more fully below.

The staff reviewed and evaluated the Beaver Valley NFPA 805 transition progress and milestones, as described in the licensee's submittals dated August 29, 2012, and November 2, 2012. In its review and evaluation, the staff considered the key transition activities discussed by FENOC, as they relate to Classical Fire Protection, Nuclear Safety Capability Assessment, Probabilistic Risk Assessment, and Non-Power Operations, as well as the licensee's parallel efforts to address identified fire protection non-compliances to reduce fire risk, ahead of the staff's review of an NFPA 805 LAR. Based on the licensee's current status, scheduled key activities, and planned modifications, the NRC staff has determined that the licensee has provided adequate justification for revising the LAR submittal date. Therefore, the NRC has determined that the date for submitting an acceptable NFPA 805 LAR should be extended. This Order is being issued to revise the original Beaver Valley LAR submittal date of September 30, 2012, to December 31, 2013. The new submittal date supports FENOC's continued progress in activities related to the transition to NFPA 805, as described in the letter dated August 29, 2012.

FENOC may, at any time, cease its transition to NFPA 805 and comply with Beaver Valley's existing licensing basis and the regulations set forth in 10 CFR 50.48, as applicable. As indicated in the Enforcement Policy, if FENOC decides not to complete the transition to 10 CFR 50.48(c), it must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). If FENOC fails to meet the new LAR submittal date and fails to comply with its existing licensing basis, the NRC will take appropriate enforcement action, consistent with its Enforcement Policy.

On February 13, 2013, FENOC consented to issuing this Order, as described in Section V below. FENOC further agreed that this Order will be effective upon issuance and that it has waived its rights to a hearing.

IV

Based on the licensee's current status, scheduled key activities, and planned modifications, the NRC has determined that the licensee has provided adequate justification for its commitment given in Section V, and, thus, for the extension of enforcement discretion. Because the licensee will continue to perform modifications to reduce current fire risk in parallel with the development of its NFPA 805 LAR, the staff finds this acceptable to ensure public health and safety. Based on the above and FENOC's consent, this Order is effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, "Orders," IT IS HEREBY ORDERED THAT LICENSE NOS. DPR-66 AND NPF-73 ARE MODIFIED AS FOLLOWS:

- A. FENOC will submit an acceptable license amendment request for Beaver Valley Power Station, Units 1 and 2, to adopt NFPA Standard 805 by no later than December 31, 2013.

- B. FENOC will continue to receive enforcement discretion until December 31, 2013. If the NRC finds that the LAR is not acceptable, the NRC will take steps consistent with the Enforcement Policy.

The Director of the Office of Enforcement, in consultation with the Director of the Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days from the date of this Order. In addition, any other person adversely affected by this Order may request a hearing on this Order within 30 days from the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by

interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link

located on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll free call at 1- 866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission

of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For The Nuclear Regulatory Commission

Dated at Rockville, Maryland this 20th of February 2013.
/RA/

Roy P. Zimmerman, Director
Office of Enforcement