



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

July 18, 2019

Mr. David B. Hamilton
Senior Vice President, Chief Nuclear Officer
FirstEnergy Nuclear Operating Company
341 White Pine Drive
Akron, OH 44320

**SUBJECT: BEAVER VALLEY POWER STATION, UNIT NOS. 1 AND 2; DAVIS-BESSE
NUCLEAR POWER STATION, UNIT NO. 1; AND PERRY NUCLEAR POWER
PLANT, UNIT NO. 1 – REQUEST FOR ADDITIONAL INFORMATION
REGARDING APPLICATION FOR ORDER CONSENTING TO TRANSFER OF
LICENSES AND CONFORMING LICENSE AMENDMENTS
(EPID-L-2019-LLM-0000)**

Dear Mr. Hamilton:

By letter dated April 26, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19116A087), as supplemented by letter dated May 31, 2019 (ADAMS Accession No. ML19151A531), FirstEnergy Nuclear Operating Company acting on behalf of itself and FirstEnergy Nuclear Generation, LLC, submitted an application for an order consenting to the transfer of the licenses for Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; and Perry Nuclear Power Plant, Unit No. 1, and their respective generally licensed independent spent fuel storage installation facilities (ISFSIs). The application also requests conforming license amendments to update the entity names on the licenses and modify the \$400 million support agreement.

The U.S. Nuclear Regulatory Commission (NRC) staff is reviewing your submittal and has determined that additional information is required to complete its review of the application to enable the staff to make an independent assessment regarding the acceptability of the proposed action in terms of regulatory requirements and the protection of public health and safety. The specific request for additional information is provided in the enclosure to this letter. During a call with your staff on July 16, 2019, your staff agreed that you would submit the response to the request for additional information on or before August 9, 2019.

The NRC staff considers that timely responses to the requests for information help ensure sufficient time is available for staff review and contribute toward the NRC's goal of efficient and effective use of staff resources.

If you have any questions, please contact Bhalchandra Vaidya at 301-415-3308 or via e-mail at Bhalchandra.vaidya@nrc.gov.

Sincerely,

/RA/

Bhalchandra Vaidya, Project Manager
Plant Licensing Branch III
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-334, 50-412, 50-346, and 50-440

Enclosure:
Request for Additional Information

cc:

Mr. Frank R. Payne
Acting Site Vice
President-Perry
FirstEnergy Nuclear
Operating Company
Perry Nuclear Power Station

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P.O. Box 97, SB306
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Mr. Mark B. Bezilla
Site Vice President

FirstEnergy Nuclear
Operating Company
Davis-Besse Nuclear Power
Station
c/o Davis-Besse NPS
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5501 North State, Route 2
Oak Harbor, OH 43449-9760

Mr. Rod L. Penfield
Site Vice President

FirstEnergy Nuclear
Operating Company
Beaver Valley Power Station

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P.O. Box 4, Route 168
Shippingport, PA 15077

Listserv

SUBJECT: BEAVER VALLEY POWER STATION, UNIT NOS. 1 AND 2; DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1; AND PERRY NUCLEAR POWER PLANT, UNIT NO. 1 – REQUEST FOR ADDITIONAL INFORMATION REGARDING APPLICATION FOR ORDER CONSENTING TO TRANSFER OF LICENSES AND CONFORMING LICENSE AMENDMENTS (EPID-L-2019-LLM-0000) DATED JULY 18, 2019

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ADAMS Accession No. ML19192A222

(*) By email

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DATE	7/17/19	7/17/19	7/17/19	7/17/19
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DATE				

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REQUEST FOR ADDITIONAL INFORMATION RELATED TO THE
APPLICATION FOR ORDER CONSENTING TO TRANSFER OF LICENSES AND
CONFORMING LICENSE AMENDMENTS (EPID-L-2019-LLM-0000)
FIRSTENERGY NUCLEAR OPERATING COMPANY (FENOC)
BEAVER VALLEY POWER STATION, UNIT NOS. 1 AND 2;
DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1; AND
PERRY NUCLEAR POWER PLANT, UNIT NO. 1, AND THEIR RESPECTIVE GENERALLY
LICENSED INDEPENDENT SPENT FUEL STORAGE INSTALLATION FACILITIES
DOCKET NOS. 50-334, 50-412, 72-1943, 50-346, 72-14, 50-440, AND 72-69

By letter dated April 26, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19116A087), FirstEnergy Nuclear Operating Company (FENOC) acting on behalf of itself and FirstEnergy Nuclear Generation, LLC (FENGen) (together, the Applicants) submitted an application for Order consenting to transfer of licenses and conforming license amendments for Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; and Perry Nuclear Power Plant, Unit No. 1, and their respective generally licensed independent spent fuel storage installation facilities (ISFSIs). Portions of the letter dated April 26, 2019, contained sensitive unclassified non-safeguards information and, accordingly, have been withheld from public disclosure pursuant to Section 2.390 of Title 10 of the *Code of Federal Regulations* (10 CFR).

The provisions of Section 184 of the Atomic Energy Act of 1954, as amended, and the U.S. Nuclear Regulatory Commission (NRC) regulations at 10 CFR 50.80, "Transfer of licenses," require NRC approval for the transfer of control of the ownership and/or operating authority responsibilities within the facility operating license. Specifically, 10 CFR 50.80(a) states, in part, that "No license for a production or utilization facility . . . , shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing." Additionally, 10 CFR 50.80(c) states, in part, that "the Commission will approve an application for the transfer of a license, if the Commission determines: (1) the proposed transferee is qualified to be the holder of the license; and (2) the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

NRC regulations at 10 CFR 50.33(a) require that each application shall state "[n]ame of applicant."

Enclosure

NRC regulations at 10 CFR 50.33(d) require that, the application shall state:

. . . .

(3) If applicant is a corporation or an unincorporated association, state:

- (i) The state where it is incorporated or organized and the principal location where it does business;
- (ii) The names, addresses and citizenship of its directors and of its principal officers;

. . . .

NRC regulations at 10 CFR 50.33(f) require that the applicant for a license "provide information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought." The regulation further states that, as applicable, the following should be provided:

. . . .

(4) Each application for a[n]. . . operating license . . . submitted by a newly-formed entity organized for the primary purpose of constructing and/or operating a facility must also include information showing:

- (i) The legal and financial relationships it has or proposes to have with its stockholders or owners;
- (ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and
- (iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(5) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

NRC regulations at 10 CFR 50.38 require that "[a]ny person who is a citizen, national, or agent of a foreign country, or corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license."

Finally, NUREG 1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," describes the process the NRC staff uses to review the financial qualifications and methods of providing decommissioning funding assurance required of power reactor license applicants and licensees.

Based on review of the information supplied to date, the NRC staff needs additional information to clearly understand the financial qualifications of OwnerCo and OpCo to hold an NRC license to perform the activities described in the application and authorized by the license. Accordingly, the NRC staff has the following requests for additional information:

Request for Additional Information

1. Based on the NRC staff review, it appears that the application involves both indirect and direct transfers of the subject licenses versus only an indirect transfer, as the application appears to refer to new corporate entities as the NRC licensees. Specifically, according to the application, the names, state(s) of incorporation, and final managers/directors and principal officers for OpCo and OwnerCo are not yet known. To the extent that the transaction is not a simple name change in that OpCo and OwnerCo are new corporate entities, the NRC would consider the transaction to involve a direct transfer of control of the subject licenses. Based on the above, provide additional information on why the application should be treated only as an indirect license transfer. Otherwise, supplement the application to reflect that the request involves both direct and indirect transfers of the subject licenses.
2. The application does not provide the final legal entity name for the new holding company (New HoldCo) or its subsidiaries, referred to as OpCo (reorganized FENOC) and OwnerCo (reorganized FENGen). According to the application, the proposed license transfers involve administrative changes to the Facility's Licenses to reflect OwnerCo as owner, and OpCo as operator, as the post-reorganization entities responsible for the Facility. Accordingly, FENOC requests conforming license amendments. The Applicants state that the names in the application (aforementioned) are placeholders and that the Applicants will inform the NRC of the final legal entity names and submit updated proposed operating license revision pages. Pursuant to 10 CFR 50.33(a) submit the final legal entity names of New HoldCo, OwnerCo and OpCo.
3. The application does not provide complete information regarding all directors, principal officers, or board members of New HoldCo or its subsidiaries, including the proposed licensees OwnerCo and OpCo after emergence from bankruptcy. However, in the application, the applicant identifies regulatory commitments that state "When the final New HoldCo directors and principal officers are identified prior to the transfer, the Applicants will inform the NRC of their names, in writing, through a supplement to the application." Additionally, according to the application, the state(s) of incorporation of OwnerCo and OpCo are not yet known. Pursuant to 10 CFR 50.33(d)(3)(i) and (ii) and 10 CFR 50.38, submit the state(s) of incorporation, as appropriate, and the names, addresses, and citizenship of the directors and principal officers of New HoldCo, OwnerCo, and OpCo after emergence from bankruptcy.
4. The application does not provide complete information regarding the creditors and shareholders of the New HoldCo.

The application states, "[b]ased on the currently understood holding of FES and Applicant debt, and other claims, the identities and approximate percentages of the New HoldCo voting shares expected to be held by the largest shareholders (those holding more than 5 percent of equity) after consummation of the transaction will be as follows: [Nuveen Asset Management, LLC (30 percent) and Avenue Capital Management II L.P. (15 percent)]."

Pursuant to 10 CFR 50.33(f)(4)(i), submit the legal and financial relationships New HoldCo has or proposes to have with its shareholders and owners. Additionally, pursuant to 10 CFR 50.33(f)(4)(i), submit any additional legal and financial relationships OwnerCo or OpCo have or propose to have with shareholders and owners that are not included in the New HoldCo request above.

5. The application references, and includes as Exhibit A, the Fourth Amended Joint Plan of Reorganization, submitted to the United States Bankruptcy Court for the Northern District of Ohio (Bankruptcy Court) on April 18, 2019. The application also refers to and incorporates by reference, the Applicants' March 15, 2019, Irradiated Fuel Management Plan (ADAMS Accession No. ML19074A244), which references the Disclosure Statement for the First Amended Joint Plan of Reorganization filed on March 9, 2019. On May 30, 2019, the Debtors filed a Fifth Amended Joint Plan of Reorganization with the Bankruptcy Court. The application should reference the current version of the reorganization plan submitted to the Bankruptcy Court for approval. Provide a supplement to the application which includes a reference to the current reorganization plan. The NRC expects that the applicants will continue to supplement the application with references to any other such amendments, as necessary, until the NRC has made a final decision.