

is conditioned upon all of the PECO and ComEd nuclear units described in the application to be transferred to Exelon Generation Company becoming owned by Exelon Generation Company contemporaneously.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 7 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 20, 1999, and supplemental submittals dated January 14, March 10, March 23, March 29, and June 16, 2000, and the safety evaluation dated August 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-382, License No. NPF-38 EA-00-093]

### Entergy Operations, Inc., Waterford 3; Confirmatory Order Modifying License (Effective Immediately)

#### I

Entergy Operations, Inc. (Licensee) is the holder of Facility Operating License No. NPF-38 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on March 16, 1985. The license authorizes the operation of Waterford 3 (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Taft, Louisiana.

#### II

10 CFR 73.55(a) states, in part, that the Licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high

assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threat as stated in Paragraph 73.1(a).

Paragraph 1.3.3 of the Waterford 3 Safeguards Contingency Plan states, in part, that the security concept of operations was based on response to unauthorized entry or activity, and delay of intruders short of the vital areas by barriers and the security/response force. Further, that these basic functions are the responsibility of the security organization in order to assure protection of the plant against hostile acts of sabotage.

On October 4-7, 1999, the NRC conducted an inspection at the Waterford Steam Electric Station, Unit 3 facility to review the Licensee's compliance with 10 CFR Part 73 and its physical security plan (reference NRC Inspection Report 50-382/99-17). Based on the conduct of tabletop exercises, weaknesses were identified with the Licensee's capabilities to respond adequately to a design basis threat intrusion. Specific information about the inspection findings has been classified as Safeguards Information and is not available to the public.

As a result of these October 1999 inspection findings, the Licensee attended a management meeting in the NRC Region IV office on November 10, 1999, to discuss the identified weaknesses. During that meeting, the Licensee indicated that corrective actions would be taken to improve weapons deployment, defensive strategy, and hardened barriers, and that additional training would be conducted as appropriate. The Licensee indicated its belief that, although there were problems, its physical security plan was capable of meeting its intended function, and invited the NRC to assess its program during the conduct of force-on-force exercises. Subsequently, it was agreed that an inspection of the conduct of force-on-force exercises would occur in March 2000.

On March 20-23, 2000, the NRC conducted the follow-up inspection at the Waterford facility, which included tabletop and force-on-force exercises (reference NRC Inspection Report 50-382/00-03). In addition to identifying findings which were similar to those identified during the October 1999 inspection, the NRC identified additional significant weaknesses. Problem areas included target sets, defensive positions, armed responder

staffing levels, response time calculations, operations/security interface particularly with respect to drill/target set development and participation, command and control, guidance on the use of protective masks by the armed responders, response weapon proficiency, and administrative controls to ensure that plant conditions are evaluated to ensure protective strategy assumptions remain valid. More specific information about the inspection findings has been classified as Safeguards Information, and is not available to the public. During the exit briefing, the NRC identified an apparent violation of 10 CFR 73.55(a) and the safeguards contingency plan for the failure to demonstrate a capability to protect vital equipment by locating and stopping adversaries during force-on-force exercises. The Licensee implemented immediate interim corrective actions and compensatory measures which were satisfactory to the NRC.

A closed, predecisional enforcement conference was conducted on May 30, 2000, with the Licensee. During the conference, the Licensee identified as the root cause of its weaknesses in the physical security program a breakdown in management controls; specifically that: responsibility and accountability had not been clearly defined; repetitive management changes had resulted in a lack of organization; reduced staffing levels had affected security force training; change management practices had not been applied to a changing environment; a lack of accountability had resulted in a failure to act on available information; and Entergy Operations had not exercised adequate oversight of several critical functions being conducted by contractors. The Licensee identified several contributing causes for its deficiencies as well, including: inadequate design of the security program; poor security program implementation; a complacent culture; and inadequate training. In addition, the Licensee identified several missed opportunities to identify these problems.

During the conference, the Licensee noted the interim compensatory measures it had taken to address these problems and discussed its Security Improvement Plan (SIP) which would provide more permanent improvements. By letter dated June 8, 2000, the NRC requested additional information regarding the SIP. The Licensee responded by letter dated June 23, 2000, and revised the SIP to reflect its response. While acknowledging the interim compensatory measures the Licensee has taken, the NRC believes

issuance of this Order is necessary to ensure corrective actions are effectively implemented over the long term. By letter and telephone call dated July 21, 2000, the NRC proposed that specified commitments be confirmed by Order, and that the Order require the Licensee to demonstrate the ability to protect the plant from the design basis threat. By letter dated July 27, 2000, the Licensee agreed to confirming the identified commitments by Order, and the Licensee waived its right to request a hearing on all or part of the Order.

### III

By letter dated July 27, 2000, the Licensee has agreed to the following conditions:

A. Entergy Operations, Inc., shall complete the following items by November 30, 2000:

#### 1. Protective Strategy Corrective Actions

a. Perform independent assessments of the protective strategy to identify areas for improvement, and evaluate the results of the assessments for enhancing the protective strategy.

b. Develop and implement an enhanced protective strategy for protection of target sets and document this strategy.

c. Revise the Physical Security Plan, Safeguards Contingency, and Security Training and Qualifications plans to reflect the enhanced protective strategy.

2. Train the current security response force and other staff, as necessary, on the enhanced protective strategy.

3. Implement modifications within and outside the plant, as necessary, to implement the enhanced protective strategy.

B. Entergy Operations, Inc., shall demonstrate the ability to protect the plant against the design basis threat within 90 days after completion of the conditions set forth above in A.1 through A.3. Such demonstration will be accomplished by conducting force-on-force exercises evaluated by the NRC.

On July 27, 2000, the Licensee consented to issuing this Order with the commitments, as described in Section IV below. The Licensee further agreed in its July 27, 2000, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that the Licensee will be capable of protecting the plant from the design basis threat.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments

the plant's safety is reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

### IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered*, effective immediately, that License No. NPF-38 is modified as follows:

A. Entergy Operations, Inc., shall complete the following items by November 30, 2000:

#### 1. Protective Strategy Corrective Actions

a. Perform independent assessments of the protective strategy to identify areas for improvement, and evaluate the results of the assessments for enhancing the protective strategy.

b. Develop and implement an enhanced protective strategy for protection of target sets and document this strategy.

c. Revise the Physical Security Plan, Safeguards Contingency, and Security Training and Qualifications plans to reflect the enhanced protective strategy.

2. Train the current security response force and other staff, as necessary, on the enhanced protective strategy.

3. Implement modifications within and outside the plant, as necessary, to implement the enhanced protective strategy.

B. Entergy Operations, Inc., shall demonstrate the ability to protect the plant against the design basis threat within 90 days after completion of the conditions set forth above in A.1 through A.3. Such demonstration will be accomplished by conducting force-on-force exercises evaluated by the NRC.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

### V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of

good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person 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 2.714(d).

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

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 IV above shall be final 20 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 IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 4th day of August 2000.

For the Nuclear Regulatory Commission.

**R. W. Borchardt,**

*Director, Office of Enforcement.*

[FR Doc. 00-20583 Filed 8-11-00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440, License No. NPF-58 EA 99-012]

**First Energy Operating Company, FENOC; Perry Nuclear Power Plant, Unit 1; Order Imposing Civil Monetary Penalty**

### I

First Energy Operating Company (FENOC or Licensee) is the holder of Operating License No. NPF-58 issued by the Nuclear Regulatory Commission