

For the Nuclear Regulatory Commission.

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346; NRC-2010-0125]

### FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station; Exemption

#### 1.0 Background

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NFP-3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Ottawa County, Ohio.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001 security orders. It is from one of these new requirements that DBNPS now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and safeguards information and, accordingly, is not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a significant modification to the current site security configuration before all requirements can be met. Specifically, the request is for one specific requirement from the current March 31, 2010, deadline, to February 3, 2011. Being granted this exemption for the one item would allow the licensee to complete the modification and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

#### 3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The approval of this exemption, as noted above, would allow an extension from March 31, 2010, until February 03, 2011, for one specified area of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule Power Reactor Security provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the

final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

#### *Davis-Besse Nuclear Power Station Schedule Exemption Request*

The licensee provided detailed information in the enclosure of its November 30, 2009, letter requesting an exemption. Enclosure 1 contains proprietary information (not publically available, contains security-related information) regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that would ensure the licensee to achieve full compliance by February 3, 2011. The timeline provides dates indicating when (1) Construction will begin on various phases of the project, (2) outages are scheduled for the unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemption for this specific requirement, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By February 3, 2011 DBNPS will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

#### 4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the

licensee has provided adequate justification for its request for an extension of the compliance date with regard to the one specified requirement of 10 CFR 73.55 to February 3, 2011.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The NRC staff has determined that the long-term benefits that will be realized when the DBNPS equipment installation is complete, justifies extending the full compliance date with regard to the specified requirement of 10 CFR 73.55. The security measures DBNPS needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the one item specified in the enclosure of FENOC letter dated November 30, 2009, the licensee is required to be in full compliance by February 3, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 14635).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440; NRC-2010-0124]

### FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant; Exemption

#### 1.0 Background

FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NFP-58, which authorizes operation of the Perry Nuclear Power Plant, Unit 1 (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 (NRC, the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Lake County, Ohio.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 73, "Physical protection of plants and materials," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 includes additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from one of these new requirements that PNPP now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 30, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 30, 2009, letter contains proprietary and safeguards information and, accordingly, is not

available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a significant modification to the current site security configuration before all requirements can be met. Specifically, the request is for one specific requirement from the current March 31, 2010, deadline, to November 25, 2010. Being granted this exemption for the one item would allow the licensee to complete the modification and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

#### 3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The approval of this exemption, as noted above, would allow an extension from March 31, 2010, until November 25, 2010, for one specified area of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule Power Reactor Security provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what