

for NFS Exemption,” November 15, 2010, ADAMS Accession No. ML103200288.

Dated at Rockville, Maryland, this 1st day of December 2010.

For the Nuclear Regulatory Commission.

**Merritt Baker,**

*Acting Chief, Fuel Cycle Facilities Branch,  
Division of Fuel Cycle Safety and Safeguards,  
Office of Nuclear Material Safety and  
Safeguards.*

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## **NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-346; NRC-2010-0378]

### **Firstenergy Nuclear Operating Company, Davis-Besse Nuclear Power Station; Environmental Assessment And Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an Exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.12, “Specific Exemptions,” from 10 CFR 50.61, “Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events” and from 10 CFR part 50, Appendix G, “Fracture Toughness Requirements” for Facility Operating License No. NPF-3, issued to FirstEnergy Nuclear Operating Company (FENOC, the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), located in Ottawa County, Ohio. In accordance with 10 CFR 51.21, the NRC performed an environmental assessment documenting its findings. The NRC concluded that the proposed actions will have no significant environmental impact.

#### **Environmental Assessment**

##### *Identification of the Proposed Action*

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix G requires that fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary of light-water nuclear power reactors provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime, section 50.61 provides fracture toughness requirements for protection against pressurized thermal shock (PTS) events. By letter dated April 15, 2009 (Agencywide Documents Access and Management System

(ADAMS) Accession No. ML091130228), as supplemented by letter dated December 18, 2009 (ADAMS Accession No. ML093570103), and October 8, 2010 (ADAMS Accession No. ML102861221), FENOC proposed exemptions from the requirements of 10 CFR part 50, Appendix G and 10 CFR 50.61, to revise certain DBNPS reactor pressure vessel (RPV) initial (unirradiated) properties using Framatome Advanced Nuclear Power Topical Report BAW-2308, Revisions 1-A and 2-A, “Initial RT<sub>NDT</sub> of Linde 80 Weld Materials.”

The licensee requested an exemption from Appendix G to 10 CFR part 50 to replace the required use of the existing Charpy V-notch (C<sub>v</sub>) and drop weight-based methodology and allow the use of an alternate methodology to incorporate the use of fracture toughness test data for evaluating the integrity of the DBNPS RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of American Society for Testing and Materials (ASTM) Standard Test Method E 1921, “Standard Test Method for Determination of Reference Temperature T<sub>0</sub>, for Ferritic Steels in the Transition Range,” and American Society for Mechanical Engineering Boiler and Pressure Vessel Code (ASME B&PV Code), Code Case N-629, “Use of Fracture Toughness Test Data to establish Reference Temperature for Pressure Retaining materials of Section III, Division 1, Class 1.” The exemption is required since Appendix G to 10 CFR part 50, through reference to Appendix G to Section XI of the ASME Code pursuant to 10 CFR 50.55(a), requires the use of a methodology based on C<sub>v</sub> and drop weight data.

The licensee also requested an exemption from 10 CFR 50.61 to use an alternate methodology to allow the use of fracture toughness test data for evaluating the integrity of the DBNPS RPV circumferential beltline welds based on the use of the 1997 and 2002 editions of ASTM E 1921 and ASME Code Case N-629. The exemption is required since the methodology for evaluating RPV material fracture toughness in 10 CFR 50.61 requires the use of the C<sub>v</sub> and drop weight data for establishing the PTS reference temperature (RT<sub>PTS</sub>).

The proposed action is in accordance with the licensee’s application dated April 15, 2009, as supplemented by letters dated December 18, 2009, August 26 and October 8, 2010.

##### *The Need for the Proposed Action*

The proposed action is needed to allow the licensee to use an alternate method, as described in Topical Report

BAW-2308, Revisions 1-A and 2-A, “Initial RT<sub>NDT</sub> of Linde 80 Weld Materials” for determining the initial, unirradiated material reference temperatures of the Linde 80 weld materials present in the beltline region of the DBNPS RPV. This action, by being exempted from 10 CFR 50.61 would allow the licensee to revise its pressurized thermal shock reference temperature values in the future.

##### *Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed exemption. The NRC staff has concluded that the proposed action to allow an alternate method for determining the initial, unirradiated material reference temperatures of the Linde 80 weld materials present in the beltline region of the DBNPS RPV would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Final Safety Analysis Report for DBNPS.

The NRC staff’s safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. The proposed action does not involve a change to plant buildings or land areas on the DBNPS site. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven’s Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the “no-action” alternative action are similar.

### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement, NUREG-75/097, dated October 1975, for DBNPS.

### *Agencies and Persons Consulted*

In accordance with its stated policy, on October 22, 2010, the staff consulted with the Ohio State official, Ms. Carol O’Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

### *Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s letter dated April 15, 2009. Documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 29th day of November 2010.

For the Nuclear Regulatory Commission.  
**Michael Mahoney**,  
*Project Manager, Plant Licensing Branch III-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. IA-3119; File No. S7-38-10]**

### **Approval of Investment Adviser Registration Depository Filing Fees**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of intent to charge revised IARD filing fees for advisers registering with or registered with the Commission.

**SUMMARY:** The Securities and Exchange Commission (“Commission” or “SEC”) is revising Investment Adviser Registration Depository annual and initial filing fees that will be charged beginning January 1, 2011.

*Hearing or Notification of Hearing:* An order approving the IARD filing fees will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 2010. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission’s Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

**FOR FURTHER INFORMATION CONTACT:** Keith Kanyan, IARD System Manager, at 202-551-6737, or [larules@sec.gov](mailto:larules@sec.gov), Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-8549.

**SUPPLEMENTARY INFORMATION:** Section 204(b) of the Investment Advisers Act of 1940 (“Advisers Act”) authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.<sup>1</sup> In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation, Inc.

(“FINRA”) as the operator of the Investment Adviser Registration Depository (“IARD”) system. At the same time, the Commission approved, as reasonable, filing fees.<sup>2</sup> The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.<sup>3</sup> Over 11,000 advisers currently use the IARD system to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. (“NASAA”),<sup>4</sup> and representatives of FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one-year period.<sup>5</sup> The Commission concluded that this was appropriate and waived annual fees.<sup>6</sup> In 2006, 2008, and 2009 FINRA wrote to the staff again, recommending a two-year, a nine-month, and a five-month waiver, respectively, of all fees to continue to reduce the surplus.<sup>7</sup> The Commission agreed and issued orders waiving all IARD fees.<sup>8</sup> At the conclusion of the 2009 waiver, FINRA wrote to the staff again, recommending reduced levels of fees be charged in

<sup>2</sup> Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA was formerly known as NASD.

<sup>3</sup> Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

<sup>4</sup> The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

<sup>5</sup> NASD letter dated September 9, 2005, available at <http://www.sec.gov/rules/other/nasdlet090905.pdf>.

<sup>6</sup> Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005) [70 FR 59789 (Oct. 13, 2005)].

<sup>7</sup> NASD letter dated October 13, 2006 and FINRA letters dated October 10, 2008 and July 8, 2009 available at <http://www.sec.gov/rules/other/2006/nasdletter101306-iardfee.pdf>, <http://www.sec.gov/rules/other/2008/finraletter101008-iardfees.pdf>, and <http://www.sec.gov/rules/other/2009/finraletter070809-iardfees.pdf>, respectively.

<sup>8</sup> Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006), Investment Advisers Act Release No. 2806 (Oct. 30, 2008) [73 FR 65900 (Nov. 5, 2008)], and Investment Advisers Act Release No. 2909 (July 31, 2009) [74 FR 39352 (Aug. 6, 2009)].

<sup>1</sup> 15 U.S.C. 80b-4(b).