



April 12, 2005

Luis A. Reyes, Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: PETITION PURSUANT TO 10 CFR 2.206 – ENFORCEMENT ACTION AGAINST
FIRSTENERGY FOR BEAVER VALLEY 10 CFR 50.9 VIOLATION**

Dear Mr. Reyes:

Pursuant to the §2.206 of Title 10 of the Code of Federal Regulations, the Union of Concerned Scientists submits this petition seeking enforcement action against the FirstEnergy Nuclear Operating Company.

What enforcement action do we seek?

UCS requests that NRC either impose a civil penalty of at least \$55,000 or move the license renewal application for Beaver Valley to the end of the current queue.

Why is enforcement action warranted?

NRC news release No. 05-052 dated March 24, 2005, reported that the NRC returned the license renewal application submitted by FirstEnergy on February 9, 2005. Mr. David Matthews, Director of the Division of Regulatory Improvement Programs at NRC, is quoted in this news release as saying:

The NRC's primary mission is ensuring protection of public health and safety, and we can't do that for an additional 20 years of Beaver Valley operation unless we have complete, accurate and up-to-date information on the plant. Given the gaps in the current application, we simply could not properly review FirstEnergy's request.

The NRC determined that the February 9th submittal by FirstEnergy was not complete and accurate in all material respects. This is a violation of 10 CFR 50.9 paragraph (a):

§ 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

Could FirstEnergy have submitted a complete and accurate license renewal application?

FirstEnergy had no excuse for submitting a incomplete and inaccurate application.

The NRC has publicly provided reams of guidance on its expectations. Posted on the NRC's website at <http://www.nrc.gov/reactors/operating/licensing/renewal/guidance.html> are numerous aids that FirstEnergy could have used to ensure its application was complete and accurate. For example, the NRC

provides the Generic Aging Lessons Learned (GALL) report, the Nuclear Energy Institute guidance on license renewal applications, the Standard Review Plan, and even the agency's internal inspection procedures and office instructions on license renewal. The NRC's expectation could not have been more available and clear.

But there was ample information readily available in addition to the voluminous NRC guidance. The NRC had already approved license renewal for twenty-eight (28) reactors prior to the submission of the Beaver Valley application. These applications and the NRC's Safety Evaluation Reports were publicly available to FirstEnergy.

The pathway to a complete and accurate license renewal application was marked very well by the NRC. This pathway was illuminated very well by the industry. FirstEnergy has zero excuse for wandering off such a well-marked, well-illuminated path.

Why is a civil penalty of \$55,000 appropriate?

In Enforcement Action EA-088 dated June 27, 2001, the NRC imposed a \$55,000 fine on the licensee of the Palisades nuclear plant for failing to provide complete and accurate information to the agency in letters dated February 16, 2000, and February 18, 2000. The NRC noted:

The NRC staff is satisfied that the failure to provide complete and accurate information was the result of an oversight on the part of members of your staff and not a deliberate act to withhold information material to the NRC's decision making process.

Thus, FirstEnergy need not deliberately provide incomplete and inaccurate information to the NRC in order to violate 10 CFR 50.9, just as the Palisades licensee's actions were not found to be deliberate. FirstEnergy deserves the same sanction for the same violation.

FirstEnergy is currently under investigation by the U.S. Department of Justice based on a referral in September 2003 from the NRC about apparent incomplete and inaccurate information provided by FirstEnergy to the NRC in fall 2001. While this case is ongoing, it has already compelled FirstEnergy to formally explain to the NRC how it would ensure the completeness and accuracy of submittals to the NRC. Specifically, by letter dated October 24, 2003, FirstEnergy's Chief Nuclear Officer informed the NRC Region III Regional Administrator that:

FENOC has taken actions to ensure that future regulatory submittals are complete and accurate in all material respects. In April 2003, the procedure for preparation of outgoing correspondence to the NRC was revised to require that the statements of fact for applicable regulatory submittals be properly validated before the submittal can be issued. Additionally site supervisory personnel have been given training to ensure that they are cognizant of the requirements of 10 CFR 50.9 and the implications of not complying with those requirements.

It is time for the consequences of not complying with those requirements to be felt.

What is the alternative sanction and why is it appropriate?

Instead of imposing a civil penalty, the NRC could move the license renewal application for Beaver Valley to the end of the current queue. The current queue is specified by the NRC on its website at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html#future>.

Due to resource constraints that have been very publicly discussed (e.g., NRC Regulatory Issue Summaries 2001-021 dated November 16, 2001, and 2000-004 dated March 16, 2000), the NRC cannot process many license renewal applications concurrently. The license renewal application queue was a process worked out between NRC and its licensees to effectively manage the license renewal application review effort. This queue has an implicit assumption that the applications will be complete and accurate and allow NRC to conduct its reviews. By violating 10 CFR 50.9 with an inaccurate and incomplete

license renewal application submittal, FirstEnergy is forcing the NRC to expend additional resource re-checking the next submittal. The quality of the NRC's reviews can be compromised if it attempts to conduct too many reviews concurrently.

Moving the Beaver Valley license renewal application re-submission to the end of the current queue would give FirstEnergy ample time to ensure it is complete and accurate. It would allow NRC to review the re-submittal without jeopardizing the quality of staff reviews of applications submitted in accordance with 10 CFR 50.9. Thus, it is an appropriate sanction for FirstEnergy's violation.

Sincerely,

A handwritten signature in black ink that reads "David O. Lochbaum". The signature is written in a cursive, flowing style.

David Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006
(202) 223-6133, x113