

Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or 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 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.

Dated at Rockville, Maryland this 15th day of May 1997.

For the Nuclear Regulatory Commission.

**Edward L. Jordan,**

*Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.*

[FR Doc. 97-13599 Filed 5-22-97; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[IA 97-026]

**David F. Johns, P.E., Dover, Delaware; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)**

### I

David F. Johns, P.E., is the Owner/President, and Radiation Safety Officer at Capital Engineering Services, Inc. (Licensee), an NRC licensee who is the holder of Byproduct Nuclear Material License No. 07-30056-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of moisture/density gauges containing sealed sources. The License was originally issued on September 14, 1993, and is due to expire on September 30, 1998.

On February 12, 1996, the License was suspended by an NRC Order for nonpayment of fees. However, on May 17, 1996, the NRC issued a Conditional Order Extending Time that granted the Licensee's request to pay the delinquent fees in twelve monthly installment payments and extended the effective date of the February 12, 1996 Order to March 15, 1997. In addition, the

Conditional Order stated that, in the event the Licensee fails to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice. The Licensee failed to make the first installment due June 15, 1996, after the Conditional Order was issued. Accordingly, on June 16, 1996, the terms of the February 12, 1996 "Order Suspending License" again became effective.

### II

On October 30, 1996, November 19, 1996, February 20, 1997, and March 5, 1997, the NRC conducted an inspection at the Licensee's facility in Dover, Delaware. During the inspection, the inspector determined that the Licensee had continued to use licensed radioactive material after issuance of the NRC Order Suspending the License on February 12, 1996. Specifically, the Licensee used licensed material on numerous occasions between February 12, 1996, and May 16, 1996, before the Conditional Order Extending Time was granted, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

Additionally, the Licensee continued to use the gauges on numerous occasions after June 16, 1996, the date on which the Order Suspending License once again became effective because of the licensee's failure to pay the first fee installment required by the May 17, 1996 Order Extending Time, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

On October 2, 1996, the NRC issued to the Licensee a letter reiterating that, given the Licensee's failure to abide by the installment plan, the License had been suspended as specified in the February 12, 1996 Order Suspending License. During an NRC inspection on October 30, 1996, the Licensee informed the NRC inspector that it continued to use licensed material because it had not received the October 2, 1996 letter until October 28, 1996.

As a result, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on November 1, 1996, which confirmed the Licensee's commitments to cease use and/or receipt of licensed material. The CAL references a telephone conversation between Mr. David Johns, the Licensee's President, and Mr. Frank Costello, NRC Region I, that took place on October 31, 1996, in which Mr. Johns agreed to the terms of the CAL.

Concurrently with NRC inspection, the NRC Office of Investigations (OI) conducted an investigation of these

matters. During the investigation, Mr. Johns stated that he did not recall receiving by mail, or being informed of, the February 12, 1996 Order. However, Mr. Johns recalled requesting from the NRC that an installment plan be established for payment of the delinquent inspection and annual fees.

When questioned as to why the Licensee continued to use licensed material after Mr. Johns failed to make the installment due June 15, 1996, Mr. Johns stated that he forgot about the language in the May 17, 1996 Conditional Order (i.e., should the Licensee fail to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice).

As to his agreement to the terms of the CAL, Mr. Johns stated that he recalled the October 31, 1996 telephone conversation, but he understood that once he fully paid the outstanding debt, he could use the gauges. Mr. Johns, however, did not pay the outstanding debt<sup>1</sup> and, yet, allowed continued use of licensed material on numerous occasions from October 29 to, at least, November 19, 1996, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. In addition, based on the OI investigation and inspection findings, the NRC determined that the Licensee failed to test sealed sources for leakage and/or contamination, a violation of License Condition 13.

On April 10, 1997, an enforcement conference was scheduled with the Licensee. However, the Licensee failed to appear for the enforcement conference. In a subsequent telephone conversation between Mr. Johns and Mr. R. Blough, Director, Division of Nuclear Materials Safety, NRC Region I, Mr. Johns indicated that he was not planning to attend the conference. During that telephone conversation, Mr. Johns was also informed that the NRC would proceed with appropriate enforcement action.

### III

Based on the above, the NRC has concluded that Mr. Johns engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), by causing the Licensee to be in violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. This conclusion is: (1) based on the Licensee's continued use of licensed material in violation of NRC

<sup>1</sup> By Check No. 2054 dated November 20, 1996, the Licensee paid \$531.16. However, the check did not clear due to insufficient funds.

requirements despite Mr. Johns receiving numerous written communications that specifically informed him of the License suspension; and (2) supported by the fact that Mr. Johns requested from the NRC that an installment plan be established to remove the suspension of the License; Mr. Johns recalled the October 31, 1996 telephone conversation in which he was specifically informed that the License was suspended and in which he agreed not to use licensed material; and Mr. Johns failed to ensure that the Licensee paid the outstanding debt before permitting resumption of licensed material use. In addition, as the Licensee's Radiation Safety Officer, Mr. Johns failed to ensure that the Licensee tested sealed sources for leakage and/or contamination, a violation of License Condition 13.

Given Mr. Johns' deliberate misconduct, and Mr. Johns' failure to ensure that the Licensee complied with other NRC requirements, the NRC no longer has the necessary assurance that Mr. Johns, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with NRC requirements.

Consequently, I lack the requisite reasonable assurance that NRC-licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Johns were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety and interest require that Mr. Johns be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Mr. Johns is also required, for a period of three years from the date of this Order, to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to his acceptance of employment involving non-NRC-licensed activities with such prospective employer. Additionally, for a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns is required to notify the NRC of his first employment in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Johns conduct

described above is such that the public health, safety and interest require that this Order be immediately effective.

#### IV

Accordingly, pursuant to sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, and 10 CFR 150.20, It is hereby ordered that, effective immediately:

1. For a period of three years from the date of this Order, Mr. Johns is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years from the date of this Order, Mr. Johns shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as described in Paragraph IV.1 above) prior to his acceptance of employment involving non-NRC-licensed activities with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Johns' prohibition from engaging in NRC-licensed activities.

3. For a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

#### V

In accordance with 10 CFR 2.202, Mr. Johns must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. 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, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Johns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, to Mr. Johns if the answer or hearing request is by a person other than Mr. Johns. If a person other than Mr. Johns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Johns or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Johns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 at Rockville, Maryland this 15th day of May 1997.

For the Nuclear Regulatory Commission.

**Edward L. Jordan,**

*Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.*

[FR Doc. 97-13600 Filed 5-22-97; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-334 and 50-412]

**The Cleveland Electric Illuminating Company, et al., Beaver Valley Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval, by issuance of an order under 10 CFR 50.80, of the indirect transfer of Facility Operating Licenses Nos. DPR-66 and NPF-73, to the extent they are held by The Cleveland Electric Illuminating Company (CEI), Ohio Edison Company (OE), Toledo Edison Company (TE), and Pennsylvania Power Company (PP), for the Beaver Valley Power Station, Unit Nos. 1 and 2, located in Shippingport, Pennsylvania.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would consent to the indirect transfer of the licenses with respect to a proposed merger between Centenor Energy Corporation and Ohio Edison Company. Centenor Energy Corporation is the parent holding company of CEI and TE, which hold licenses to possess interests in the Beaver Valley Power Station. OE and its subsidiary PP also hold licenses to possess interests in the Beaver Valley Power Station. The merger would result in the formation of a new holding company, FirstEnergy Corporation ("FirstEnergy"), of which CEI, TE, and OE would become subsidiaries. PP would continue to remain a subsidiary of OE, and Centenor Energy Corporation would cease to exist.

According to the application, the merger will have no effect on the operation of Beaver Valley Power Station or the provisions of its operating licenses. The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power

Company will remain licensees responsible for their possessory interests and related obligations. Duquesne Light Company, which is not involved in the merger, will continue to operate the Beaver Valley Power Station after the merger, as required by the operating licenses. No direct transfer of the licenses will result from the merger.

The proposed action is in accordance with The Cleveland Electric Illuminating Company, et. al's request for approval dated December 13, 1996, as supplemented by letter dated February 14, 1997.

*The Need for the Proposed Action*

The proposed action is required to obtain the necessary consent to the indirect transfer of the licenses discussed above. According to the application, the underlying transaction is needed to create a stronger, more competitive enterprise that is expected to save over \$1 billion over the first 10 years of FirstEnergy operation.

*Environmental Impacts of the Proposed Action*

The Commission has reviewed the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Beaver Valley Power Station, Unit 1," dated July 1973, and the "Final Environmental Statement Related to the Operation of Beaver Valley Power Station, Unit 2," dated September 1986 in NUREG-1094.

*Agencies and Persons Consulted*

In accordance with its stated policy, on May 7, 1997, the staff consulted with the Pennsylvania State official, Mr. Michael P. Murphy of the Bureau of Radiation Protection, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

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

For further details with respect to the proposed action, see The Cleveland Electric Illuminating Company, et al.'s submittal dated December 13, 1996, as supplemented by letter dated February 14, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 15th day of May 1997.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-13598 Filed 5-22-97; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

**Advisory Committee on Reactor Safeguards Subcommittee Meeting on Human Factors; Revised**

The ACRS Subcommittee meeting on Human Factors scheduled to start at 8:30 a.m. on Tuesday, June 3, 1997, has been *changed to start at 12:00 Noon*. Notice of this meeting was published in the **Federal Register** on Friday, May 9, 1997 (62 FR 25678). All other items pertaining to this meeting remain the same as previously published.

*For further information contact:* Mr. Noel F. Dudley, cognizant ACRS staff engineer, (telephone 301/415-6888) between 7:30 a.m. and 4:15 p.m. (EDT).