

contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 S. Church Street, Mail Code-PB05E, Charlotte, NC 28201-1006, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 15, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (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, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 16th day of September 2005.

For The Nuclear Regulatory Commission.  
**Leonard N. Olshan,**

*Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346]

### Firstenergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its May 3, 2004, application for proposed amendment to Facility Operating License No. NPF-3; for the Davis-Besse Nuclear Power Station (DBNPS), Unit 1, located in Ottawa County, Ohio.

The proposed amendment would have changed the facility as described in the DBNPS Updated Safety Analysis Report to modify the design requirements for the emergency diesel generators (EDGs). Specifically, the proposed amendment would have allowed a departure from the regulatory position of Safety Guide 9, "Selection of Diesel Generator Set Capacity for Standby Power Supplies," for the frequency and voltage transient during the EDG automatic loading sequence.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 25, 2004 (69 FR 29767). However, by letter dated August 29, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 2004 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML041260319), as supplemented by letter dated April 28, 2005 (ADAMS Accession No. ML051220367), and the licensee's letter dated August 29, 2005 (ADAMS Accession No. ML052440346), which withdrew the application for license amendment. 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 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 by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 14th day of September 2005.

For the Nuclear Regulatory Commission.

**William A. Macon, Jr.,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[IA-05-042]

### John Myers, Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

#### I

John Myers (Mr. Myers) is owner, President and sole employee of Universal Calibrations, located in Westbrook, Maine. Universal Calibrations does not possess a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR part 30 or any Agreement State. Mr. Myers is certified by Campbell-Pacific Nuclear International, Inc. (CPN) a manufacturer of nuclear gauging devices, and an Agreement State Licensee located in California, to sell and repair their portable gauges and to train users in gauge operations. Mr. Myers performed such services for Engineering Consulting Service, (ECS, now ECS Mid-Atlantic, LLC), an NRC licensee, based on his CPN certifications. These services were provided to the licensee at its Richmond and Chantilly, Virginia facilities.

#### II

On April 9, 2004, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Myers (1) deliberately provided materially inaccurate information to staff at the ECS, Richmond, facility in order to purchase a portable nuclear gauge containing NRC licensed material with the knowledge that he was not authorized to possess licensed material, and (2) took possession of several other portable nuclear gauges from the ECS, Chantilly Facility without a NRC or Agreement State license. OI Report No. 1-2004-019 was issued on March 16, 2005, and the information developed during that investigation concluded that Mr. Myers was not licensed by the NRC or an Agreement State, to acquire or possess licensed material in moisture/density gauging devices. Based on the evidence developed during the investigation, the NRC concluded that Mr. Myers (1) took possession of a

portable nuclear gauge on September 15, 2003, from the ECS, Richmond, facility after deliberately providing materially inaccurate information to facility staff, with the knowledge that he was not authorized to possess licensed material and (2) took possession of several portable nuclear gauges on April 29, 2004, and other undetermined dates prior to this date, from the ECS, Chantilly Facility and transported them to the State of Maine. Mr. Myers was not licensed by the NRC as required under 10 CFR part 30 or an Agreement State, to acquire or possess any of the gauges.

During a previous investigation (OI Case No. 1-2004-018), issued on November 30, 2004, the NRC also determined that in November 2003, Mr. Myers took possession of a portable nuclear gauge from Triad Engineering, Inc. without a license to do so. On February 24, 2005, a Notice of Violation was issued to Triad Engineering, Inc. for transferring licensed material to Mr. Myers without verifying that he was authorized to receive the material.

In all of the cases, Mr. Myers transported the portable nuclear gauges (containing NRC licensed radioactive material) that he acquired from the ECS facilities and Triad Engineering, to his facility (UC) in the State of Maine, knowing that he was not authorized to do so.

#### III

Based on the above, the NRC has concluded that Mr. Myers, owner, President and sole employee of Universal Calibrations, deliberately violated 10 CFR 30.3 when he took possession of several portable gauging devices containing licensed radioactive material without a NRC or Agreement State license to possess byproduct material. 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. This requirement is intended to assure that such persons have the requisite facilities, training and experience to protect public health and safety from any radiation hazard associated with the use of byproduct material. The NRC must be able to rely on its licensees, and employees of licensees, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or transferred without a specific or general license. The deliberate violation of 10 CFR 30.3 by Mr. Myers, as discussed above, has raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that 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. Myers were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Myers be prohibited from any involvement in NRC-licensed activities for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Myers' 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, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Mr. John Myers is prohibited from engaging in NRC-licensed activities for a period of five (5) years from the date of this Order. 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 pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. John Myers is currently involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer or other entity, and provide a copy of this Order to the employer or other entity.

3. Subsequent to expiration of the five year prohibition, Mr. John Myers shall, for the next five years and within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or entity where he is, or will be, involved in the NRC-licensed activities. In the notification, John Myers shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of