

50.55a(g)(6)(ii)(B), Expedited Examination of Containment, requires that, by September 9, 2001, licensees of all operating nuclear power plants shall implement the inservice examinations for the first period of the first inspection interval specified in ASME Subsection IWE of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in 10 CFR 50.55a(b)(2)(ix). The purpose of performing these containment inspections is to ensure the structural integrity of the containment. While some of the inservice examinations can be performed with the plant at power, due to radiological considerations, other examinations must be scheduled during plant outages.

The licensee recently upgraded their inservice examination program by implementing the 1998 Edition of ASME Section XI, Subsection IWE in place of the 1992 Edition. The staff approved this proposal by letter dated September 18, 2000. While the licensee intended to complete the required inservice examinations during the refueling outage of October 1999, the licensee subsequently determined that some of the examinations did not meet either the 1992 or 1998 Edition and, therefore, must be re-performed. Considering that the licensee's next scheduled refueling outage will be in October 2001, the licensee will be unable to complete all inservice examinations required by regulation unless a special outage, for the purpose of performing inservice examinations, is planned prior to September 9, 2001.

In consideration of the above, by letter dated December 8, 2000, and supplemented by letter dated February 2, 2001, the licensee requested a schedular exemption from implementation of inservice examinations of the containment by September 9, 2001, as required by 10 CFR 50.55a(g)(6)(ii)(B). The schedular exemption is requested to extend the implementation date by 90 days (i.e., to December 8, 2001) to allow completion of first period examinations during the next refueling outage, scheduled to begin in October 2001.

### 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. According to

10 CFR 50.12(a)(2)(iii), special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. The requested schedular exemption is required to prevent a forced shutdown of the facility for the purpose of conducting inservice examinations prior to September 9, 2001. In addition, according to 10 CFR 50.12(a)(2)(v), special circumstances are also present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. The requested exemption is only needed for a maximum of 90 days, to the start of the next scheduled refueling outage. The staff believes that the licensee made good faith efforts to complete the inservice examinations to satisfy the regulations during their last refueling outage of October 1999.

As described in the staff's safety evaluation dated August 31, 2001, the staff finds that: (1) The requested 90-day extension is a relatively short period that would not permit a significant increase in any degradation that has developed since the general visual examination performed during the most recent refueling outage conducted in October 1999, (2) a separate outage for the performance of containment inspections to meet the date of September 9, 2001, would present undue hardship and costs due to lost generation, and (3) an extra shutdown would increase radiological exposure. On this basis, the staff concludes that (1) the exemption requested by the licensee will not present an undue risk to the public health and safety, (2) to meet the date required by the regulation would result in undue hardship or other costs, and (3) the exemption would provide only temporary relief from the applicable regulation. Therefore, the exemption is authorized pursuant to 10 CFR 50.12(a).

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon Nuclear an exemption from the requirements of 10 CFR 50.55a(g)(6)(ii)(B) for Dresden Nuclear Power Station, Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the

granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 45876).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1109 (which should be mentioned in all correspondence concerning this draft guide), is "Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants." This draft guide is a proposed Revision 1 of Regulatory Guide 1.138, and it is being revised to describe laboratory investigations and testing practices that are acceptable to the NRC staff for determining soil and rock properties and characteristics needed for engineering analysis and design for foundations and earthworks for nuclear power plants. The state of the art of laboratory testing practices of soils and rocks is reflected in existing national standards, and this guide recommends and references such standards where appropriate.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike,

Rockville, MD. Comments will be most helpful if received by December 10, 2001.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail [CAG@NRC.GOV](mailto:CAG@NRC.GOV). For information about the draft guide and the related documents, contact Mr. J. Philip at (301) 415-6211; e-mail [JXP@NRC.GOV](mailto:JXP@NRC.GOV).

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415-4737 or (800) 397-4205; fax (301) 415-3548; e-mail [PDR@NRC.GOV](mailto:PDR@NRC.GOV). Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to [DISTRIBUTION@NRC.GOV](mailto:DISTRIBUTION@NRC.GOV); or by fax to (301) 415-2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of August 2001.

For the Nuclear Regulatory Commission.

**Michael E. Mayfield,**

*Director, Division of Engineering Technology,  
Office of Nuclear Regulatory Research.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27435]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 31, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 25, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 25, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### FirstEnergy Corp., GPU, Inc., et al. (70-9793)

FirstEnergy Corp. ("FirstEnergy"), an Ohio holding company claiming exemption from registration under the Act through rule 2, its utility subsidiaries: Ohio Edison Company ("Ohio Edison"), American Transmission Systems, Incorporated ("ATSI"), The Cleveland Electric Illuminating Company ("Cleveland Electric"), The Toledo Edison Company ("Toledo Edison"), Pennsylvania Power Company ("Penn Power"), and Northeast Ohio Natural Gas Corp. ("NONGC"), and their respective subsidiaries; FirstEnergy's direct nonutility subsidiaries: FE Acquisition Corp. ("FE Acquisition"), FirstEnergy Properties, Inc. ("FE Properties"), FirstEnergy Facilities Services Group, LLC ("FE Facilities"), FE Holdings, LLC ("FE Holdings"), FELHC, Inc.

("FELHC"), FirstEnergy Securities Transfer Company ("FirstEnergy Transfer"), FirstEnergy Nuclear Operating Company ("FENOC"), FirstEnergy Solutions Corp. ("FirstEnergy Solutions"), FirstEnergy Generation Corp. ("GenCo"), FirstEnergy Ventures Corp. ("FirstEnergy Ventures"), MARBEL Energy Corporation ("MARBEL"), Centerior Indemnity Trust ("CIT"), Centerior Service Company ("Centerior Service") and FirstEnergy Service Company ("ServeCo"), and their respective subsidiaries, all located at 76 South Main Street, Akron, Ohio, 44308; and GPU, Inc. ("GPU"), a registered public utility holding company, its utility subsidiaries: Jersey Central Power & Light Company ("JCP&L"), Pennsylvania Electric Company ("Penelec"), Metropolitan Edison Company ("Met-Ed"), York Haven Power Company ("York Haven"), and Waverly Electric Power & Light Company ("Waverly Electric"), and their respective subsidiaries; and its nonutility subsidiaries: GPU Capital, Inc. ("GPU Capital"), GPU Electric, Inc. ("GPU Electric"), GPU Diversified Holdings, LLC ("GPUDH"), GPU EnerTech Holdings, Inc. ("GPU EnerTech"), GPU Power, Inc. ("GPU Power"), GPU Advanced Resources, Inc. ("GPUAR"), GPU Service, Inc. ("GPU Service"), GPU Telcom Services, Inc. ("GPU Telcom"), GPU Nuclear, Inc. ("GPU Telecom"), and MYR Group, Inc. ("MYR"), and their respective subsidiaries, all located at 300 Madison Avenue, Morristown, New Jersey, 07962, (collectively, "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, 11, and 13 of the Act and rules 42, 43, 45, 46, 52, 53, 54, and 85-91 under the Act.

Applicants request authority for, among other things, the merger of GPU with and into FirstEnergy ("Merger"); GPU will no longer be a separate entity after the Merger. Following consummation of the Merger, FirstEnergy will register with the Commission as a holding company under the Act. Under the terms of the Agreement and Plan of Merger, dated August 8, 2000 ("Merger Agreement"), FirstEnergy will pay cash for 50% and issue FirstEnergy common shares for 50% of the shares of GPU common stock outstanding at the time of the completion of the Merger, subject to a tax adjustment. The total Merger consideration to be paid by FirstEnergy