

December 20, 2001

EA-01-261

Mr. Guy G. Campbell
Vice President - Nuclear
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2
Oak Harbor, OH 43449-9760

SUBJECT: NOTICE OF VIOLATION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2001-009]

Dear Mr. Campbell:

This refers to the investigation conducted from March 5, 2001 to August 23, 2001, by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) at the First Energy Nuclear Operating Company's (FENOC's) Davis-Besse Nuclear Power Station. The investigation was initiated to determine whether a nuclear security officer at the Davis Besse facility was deliberately discriminated against by security management for raising safety concerns relating to lack of training on a new security monitoring system and a potential fitness-for-duty procedure violation. The synopsis from the OI report is enclosed.

Based on the information developed during the investigation by OI, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). Specifically, on January 11, 2001, the security officer prepared a condition report documenting that training had not been provided for certain security equipment. On January 12, 2001, a security supervisor held a "fact finding" meeting with the security officer concerning the condition report and documented the questions and answers during the January 12, 2001, "fact finding" meeting. A copy of the documentation from the January 12, 2001, "fact finding" meeting was placed in the security officer's personnel file.

The NRC views placing documentation of the fact finding meeting in the personnel file as being motivated by a desire to retaliate against the security officer. The NRC has determined that conducting the fact finding meeting and placing documentation of the meeting in the employee's personnel file as adverse actions which were taken, at least in part, as a result of the security officer engaging in protected activity when he identified and documented in the condition report the potential security department training deficiency.

The security officer informed the plant ombudsman of these adverse actions. The ombudsman conducted an investigation of the matter and determined that the actions taken were inappropriate. Based upon this determination, the licensee took corrective action.

In assessing the enforcement action for this violation, the NRC considered the significance of the adverse action, and the level of the individuals involved. The individual involved was a low level manager and the adverse action was limited to conduct of a fact finding meeting and documentation of the fact finding meeting in the employees personnel folder. However, to ensure that a safety conscious work environment exists at the Davis-Besse Nuclear Power Station, an employee must be free to report through the condition report system without fear of an adverse employment action. On balance and after consultation with the Director, Office of Enforcement, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, (Enforcement Policy) at Severity Level IV. Additionally, the action of the responsible supervisor caused that individual to be in violation of the NRC rule prohibiting deliberate misconduct, 10 CFR 50.5.

The Office of Investigations also concluded that the same supervisor was responsible for causing FENOC to be in violation of 10 CFR 50.7 when he conducted a "coaching session" on February 7, 2001, with the security officer after the officer raised a question, during a February 6, 2001, meeting of the security staff, about a potential violation of the fitness for duty (FFD) policy. The NRC has decided not to cite the February 7, 2001, issue as another example of a 10 CFR 50.7 violation.

By letter dated November 13, 2001, your attorney requested that we consider the use of enforcement discretion under Section VII.B.5 of the Enforcement Policy and not cite the violation of 10 CFR 50.7 because FENOC had self identified the issue and had taken prompt and effective corrective action to correct the January 12, 2001, situation without government intervention. However, the staff has concluded the corrective actions which included taking disciplinary action against the supervisor involved, destroying the record of the January 12, 2001, "fact finding" meeting, and providing training to security supervisors and officers on the condition report system, were not adequate to prevent the second discriminatory act by the same supervisor in response to the security officer's FFD question. As a result, the staff has determined that enforcement discretion is not warranted because of the close time between the two examples and the apparent failure of the corrective actions for the January 12, 2001, issue to prevent the second occurrence on February 7, 2001.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

John A. Grobe, Director
Division of Reactor Safety

Docket No. 50-346
License No. NPF-3

Enclosures: 1. OI Report Synopsis
2. Notice of Violation

cc w/encls: B. Saunders, President - FENOC
Plant Manager
Manager - Regulatory Affairs
M. O'Reilly, FirstEnergy
Ohio State Liaison Officer
R. Owen, Ohio Department of Health
A. Schriber, Chairman, Ohio Public
Utilities Commission

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DATE	12/20/01		12/19/01		12/20/01		12/20/01					

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¹ OE concurrence received on 12/19/01 from Barry Westreich, OE

G. Campbell

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SYNOPSIS

This investigation was initiated on March 5, 2001, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine whether a Nuclear Security Officer at the Davis-Besse Nuclear Plant was deliberately discriminated against by security management for raising safety concerns relating to lack of training on a new security monitoring system and a potential fitness-for-duty procedure violation.

Based on the evidence developed, this investigation concluded that in part, the Manager, Nuclear Security Operations, deliberately discriminated against a Nuclear Security Officer for raising a safety concern on January 11, 2001, by subjecting that Officer to a fact-finding meeting on January 12, 2001, and for the Nuclear Security Officer raising a safety concern on February 6, 2001, by subjecting that Officer to a coaching session on February 7, 2001.

NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station

Docket No. 50-346
License No. NPF-3
EA-01-261

During an NRC investigation completed on August 23, 2001, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.7(a), in part, prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include an employee providing his or her employer information about alleged violations of the Atomic Energy Act.

Contrary to the above, the FirstEnergy Nuclear Operating Company discriminated against a nuclear security officer at the Davis-Besse Nuclear Power Station for having engaged in protected activities. Specifically, on January 11, 2001, the security officer prepared a condition report documenting that training had not been provided for certain security equipment. On January 12, 2001, a security supervisor held a "fact finding" meeting with the security officer concerning the condition report and documented the questions and answers from that meeting. A copy of the documentation from the January 12, 2001, meeting was placed in the security officer's personnel file. These actions were taken as a result of the security officer having engaged in protected activity.

This is a Severity Level IV violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy Nuclear Operating Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Davis-Besse Nuclear Power Station, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 20th day of December 2001.