

September 12, 2003

The Honorable Dennis J. Kucinich
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Kucinich:

This letter responds to the petition you filed with Dr. William D. Travers pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on February 3, 2003, as supplemented on March 27, 2003, and the comments you submitted on July 7, 2003, regarding the U.S. Nuclear Regulatory Commission (NRC) staff's proposed Director's Decision. In your petition, you requested that the NRC immediately revoke FirstEnergy Nuclear Operating Company's (the licensee's) license to operate the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), in Ottawa County, Ohio.

The NRC staff shares your concerns about verifying the adequacy of plant operator performance and reassuring the public that all reasonable safety measures have been taken. As part of its evaluation of the merits of your petition, the NRC staff considered the actions of both the licensee and the NRC. After careful considerations of the issues you raised and the actions taken by both the licensee and the NRC, the NRC staff finds that, although serious violations did occur at the Davis-Besse facility, the concerns you raised do not individually or collectively warrant revocation of the license. The Davis-Besse facility is currently shut down, and will remain so until the NRC is fully satisfied that there is reasonable assurance of adequate protection of the public health and safety and that any restart issues associated with management of the facility and potential wrongdoing have been satisfactorily addressed. In its oversight of the licensee's corrective actions for the apparent violations, the NRC has not observed an inability or unwillingness on the part of FENOC to achieve compliance with NRC regulations, the Davis-Besse operating license, or the Davis-Besse design and licensing bases. Therefore, your request that the NRC revoke the Davis-Besse operating license is denied.

In your petition supplement and your comments on the proposed Director's Decision, you stated that the NRC should not issue a ruling on your petition until the NRC's Office of Investigations (OI) completes its investigation to determine whether FENOC willfully violated NRC requirements and whether FENOC deliberately misled the NRC. You also commented that any NRC decision regarding the restart of the Davis-Besse facility should not be made until this same investigation is completed and the results are made available to the public. The NRC staff has carefully evaluated your request to delay consideration of this petition pending completion of the NRC's wrongdoing investigation. As discussed in this decision, FENOC has initiated, and is still implementing, extensive corrective actions to address hardware, programmatic, and human performance issues to demonstrate or achieve compliance with NRC regulations. The corrective actions taken by the licensee and the NRC's oversight of those corrective actions make it unnecessary for the NRC to delay consideration of this petition's merits pending the completion of activities associated with the NRC's wrongdoing investigation. The NRC Davis-Besse Oversight Panel, the Director of the NRC's Office of Enforcement, the NRC Regional Administrator for NRC Region III, and the management of the NRC's Office of Nuclear Reactor Regulation have been regularly briefed on the progress of the investigation and will continue to monitor OI's activities and evaluate investigation results. However,

because there are ongoing NRC activities that may lead to civil and/or criminal proceedings, information from the OI investigation that is available to the NRC management for informing NRC decision-making is not currently available for public release.

A copy of the enclosed Director's Decision (DD-03-03) denying your petition will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the Decision within that time. The documents cited in the enclosed Decision are available for inspection at the Commission's Public Document Room and on the NRC's Web site, <http://www.nrc.gov/reading-rm/adams.html> (the Electronic Reading Room), via ADAMS.

I have also enclosed a copy of the notice of "Issuance of the Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication.

Sincerely,

/RA/

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosures: 1. Director's Decision DD-03-03
2. *Federal Register* Notice

cc: See next page

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Sincerely,

/RA/

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

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ACCESSION NOS.: **ML032480675**

Incoming: ML030370067 Director's Decision: ML032480751 Package: ML032481195

*See previous concurrence **Concurred by e-mail

OFFICE	PM:PD1-1	LA:PD3-2	PM:PD3-2	SC:PD3-2	RIII	PD:PD3
NAME	DCollins*	THarris*	JHopkins*	AMendiola*	JGrobe**	WRuland*
DATE	9/5/03	8/25/03	8/26/03	9/10/03	9/11/03	9/9/03
OFFICE	D:OI	D: OE	OCA	OGC	D: DLPM	
NAME	SLangan**	FCongel*	LPortner**	JGoldberg*	TMarsh* (ELeeds for)	
DATE	9/10/03	9/8/03	9/9/03	9/10/03	9/9/03	
OFFICE	TECH ED	ADPT	(A)D:NRR			
NAME	PKleene*	BSheron	BSheron for RBorchardt			
DATE	8/20/03	9/12/03	9/12/03			

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Dated: February 3, 2003

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OCA

NRRMailroom

NRCWEB

Davis-Besse Nuclear Power Station, Unit 1

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