

November 26, 2003

Mr. James P. Riccio
Nuclear Policy Analyst
Greenpeace
702 H Street, NW, Suite 300
Washington, DC 20001

Dear Mr. Riccio:

In the August 25, 2003, letter from you and the other Petitioners (the Nuclear Information & Resource Service and the Union of Concerned Scientists) the Nuclear Regulatory Commission (NRC) was requested to take enforcement actions against FirstEnergy Nuclear Operating Company (FirstEnergy), the licensee for Davis-Besse Nuclear Power Station in Oak Harbor, Ohio, and the NRC was requested to suspend the Davis-Besse license and prohibit plant restart until certain conditions have been met. As basis for the request to have the NRC take enforcement actions against the licensee, the Petitioners stated that FirstEnergy has failed to complete commitments related to the NRC's 50.54(f) design basis letter (issued on October 9, 1996), and refer to numerous design basis violations dating back to plant licensing (corresponds to Requests 1 and 2 described in the Petitioners' August 25 letter). The petitioners also requested that the NRC suspend the Davis-Besse license and prohibit plant restart until all design basis deficiencies identified in response to the NRC's 50.54(f) design basis letter are adequately addressed, the plant probabilistic risk assessment (PRA) is updated to reflect design flaws, and no systems are in a "degraded but operable" condition (corresponds to Requests 3, 4, and 5 described in the Petitioners' August 25 letter).

The Petitioners' representatives met with the staff on September 17, 2003, to provide additional information in support of their petition. The transcript of the September 17 meeting is considered a supplement to the Petitioners' August 25 letter. Both the August 25 letter and the transcript from the September 17 meeting are available at <http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/controlled-correspondence.html>.

In my October 7, 2003, acknowledgment letter to the Petitioners' August 25 letter, I stated that the NRC staff would provide its findings on the Petitioners' requests for "immediate action" before the Davis-Besse plant is allowed to restart. The staff considers the Petitioners' requests associated with suspending the Davis-Besse license and prohibiting plant restart until certain conditions have been met to be equivalent to "immediate action" requests. This consideration was made because the Davis-Besse licensee might complete all necessary restart activities, and the NRC staff might complete all necessary oversight activities, before the staff could finalize the Director's Decision on this petition. Requests 3, 4, and 5 contained in the Petitioners' August 25 letter are considered to be the immediate actions requests, and the staff's evaluation of each of these requests is detailed below.

In Request 3, the Petitioners requested the NRC, "suspend the license and prohibit restart of the Davis Besse reactor unless and until First Energy Nuclear Operating Company has addressed all 1000 design basis deficiencies identified in 1997." The NRC staff agrees that

design basis issues need to be addressed before plant restart. The NRC's oversight activities of the licensee's ongoing programs related to the design adequacy of the Davis-Besse plant are focused on plant safety. The licensee has initiated, and is still implementing, extensive corrective actions to address hardware, programmatic, and human performance issues to assure compliance with its license and NRC regulations. Compliance includes evaluating, testing, or inspecting safety-related systems to ensure that they are able to perform their design basis functions as defined in the plant's technical specifications (TS) and updated final safety analysis report. The staff's oversight activities include independent NRC inspections and NRC reviews of the licensee's evaluations to ensure conformance of safety systems and programs to the design and licensing bases. The adequacy of safety-significant structures, systems, and components is being tracked under NRC Restart Checklist Item 5.b, "Systems Readiness for Restart" and must be adequately addressed before the NRC will allow the plant to restart.

The Petitioners' Request 3 is based on information contained in the NRC's February 26, 2003, inspection report on Davis-Besse design-related activities, which reported that approximately 200 of the more than 1000 design basis deficiencies identified in response to the NRC's 50.54(f) design basis letter had not been corrected. The licensee had agreed, prior to the Petitioners' August 25, 2003, letter, to place all remaining unresolved design basis deficiencies identified in response to the NRC's 50.54(f) design basis letter in its corrective action program. Information on how the remaining unresolved design basis deficiencies will be dispositioned can be found in the licensee's October 20, 2003, letter responding to this Petition, and in the licensee's letter dated November 20, 2003, providing supplemental information related to the NRC's 50.54(f) design basis letter. In these letters, FirstEnergy stated that, while it had been slow to implement corrective actions for those issues identified in response to the NRC's 50.54(f) design basis letter, FirstEnergy has determined that these issues either were corrected or have been documented in condition reports and entered into the Davis-Besse corrective action program. Each condition report generated by FirstEnergy was evaluated for potential impact on the operability of systems, structures, or components (SSCs). Those conditions classified as restart action items require evaluation for needed corrective actions prior to restart. Conditions that are not classified as restart action items will remain in the licensee's corrective action program and will be prioritized for resolution, which may occur after plant restart. The licensee stated in these letters that the number of open items has been reduced to approximately 100, with only a small number designated as restart items.

Appendix B of 10 CFR Part 50 requires operators of nuclear power plants to maintain an effective corrective action program. The process described above by the licensee to evaluate and disposition the remaining design basis deficiencies conforms with this regulatory requirement. The NRC's oversight of the licensee's activities includes specific inspections of the corrective action program to assure that this process is being followed correctly. The NRC will not allow the plant to restart until the licensee has demonstrated the capability to adequately manage the resolution of unresolved design basis deficiencies.

Therefore, the staff considers these activities, initiated prior to receiving the Petition, to completely satisfy the Petitioners' immediate action request to prohibit plant restart until the licensee has addressed all 1000 design basis deficiencies. The staff also concludes that the Petitioners immediate action request to suspend the plant license until the licensee has addressed all 1000 design basis deficiencies is in effect being granted by the actions already taken by the staff. These actions include our confirmatory action letter of March 13, 2002

(which confirmed the licensee's agreement that NRC approval is required for restart of the Davis-Besse plant), the enhanced NRC oversight as described in NRC Inspection Manual Chapter 0350, and compliance with the regulatory requirements imposed on all U.S. nuclear power plants. If the licensee had not agreed to obtain NRC approval before restarting the Davis-Besse plant, the NRC would have taken appropriate regulatory actions to assure restart would not occur unless NRC approval was received.

In Request 4, the Petitioners requested the NRC, "suspend the license and prohibit restart of the Davis Besse reactor unless and until First Energy has updated its Probabilistic Risk Assessment to reflect the flaws in it[s] design and licensing basis." The Petitioners provided clarifying information related to this request during the September 17, 2003, meeting. The Petitioners are requesting that the Davis-Besse PRA be revised to include the known design flaws, which will be corrected before the plant is allowed to restart, to account for unknown design flaws that may currently exist or may exist in the future.

The NRC's policy statement on PRA encourages greater use of this analysis technique to improve safety decisionmaking and improve regulatory efficiency in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy. However, for the specific purpose of assuring that all restart issues have been satisfactorily addressed, the staff does not intend to rely on the Davis-Besse PRA to determine if there is reasonable assurance of adequate protection of the public health and safety.

On a more general level, while the staff recognizes that a PRA is a useful analysis tool, there are currently no regulatory requirements for licensees to develop a plant PRA, nor are there requirements to maintain or update a plant PRA. As explained in Management Directive 8.11, requests for changes to existing NRC regulations should be submitted as a petition for rulemaking and are not considered valid requests under 10 CFR 2.206. Therefore, the staff will not consider taking any action under Section 2.206 in regard to the Petitioners' request that the NRC suspend the license and prohibit restart of the Davis-Besse reactor until the plant PRA is updated to reflect design flaws, and this request is therefore denied.

In Request 5, the Petitioners requested the NRC, "suspend the license and prohibit restart of the Davis Besse reactor with any systems in a 'degraded but operable' condition." It is the staff's judgement that the processes and programs in place for the Davis-Besse restart effort (described above in the staff's response to Request 3) will provide reasonable assurance that all safety-related systems will be capable of performing their intended safety function and will be in compliance with the plant license and TS. The NRC has issued generic guidance (Generic Letter 91-18, "Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability") which provides a process for licensees to develop a basis to continue operation or to place the plant in a safe condition and take prompt corrective action. This process assures that issues affecting the operability of SSCs that are subject both to 10 CFR Part 50, Appendix B, and 10 CFR Part 50.59 are corrected promptly, and that SSCs in degraded but operable conditions are returned to full functional capability in a timely fashion. Each licensee is authorized to operate its plant in accordance with the NRC's regulations and the plant license. If an SSC is degraded or nonconforming but operable, the licensee must establish an acceptable basis to continue to

operate. The licensee must, however, promptly identify and correct the condition adverse to safety or quality in accordance with 10 CFR Part 50, Appendix B, Criterion XVI. The basis for this authority to continue to operate is that the plant license and TS contain the specific characteristics and conditions of operation necessary to ensure that an abnormal situation or event does not pose an undo risk to public health and safety. Thus, if the TS are satisfied and required equipment is operable, and the licensee is correcting any degraded conditions in a timely manner, allowing a plant to restart or to continue operation does not pose an undue risk to public health and safety. This generic guidance applies to all U.S. nuclear power plants, including Davis-Besse, and the NRC will continue to monitor licensees to assure that this guidance is followed appropriately. Therefore, the Petitioners Request 5 is not needed to assure plant safety nor is it consistent with established staff regulatory requirements, and is therefore denied.

As provided by Section 2.206, the NRC staff will fully evaluate the Petitioners' request for enforcement actions (Requests 1 and 2 described in the Petitioners' August 25 letter) and will document its decision in a proposed Director's Decision within a reasonable time. The proposed Director's Decision will be provided to the Petitioners and to other interested external stakeholders for comment before any final Director's Decision is issued.

Sincerely,

/RA by Brian W. Sheron for/
J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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Sincerely,

/RA by Brian W. Sheron for/

J. E. Dyer, Director

Office of Nuclear Reactor Regulation

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Davis-Besse Nuclear Power Station, Unit 1
cc:

Mary E. O'Reilly
FirstEnergy Corporation
76 South Main St.
Akron, OH 44308

Manager - Regulatory Affairs
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State - Route 2
Oak Harbor, OH 43449-9760

Director, Ohio Department of Commerce
Division of Industrial Compliance
Bureau of Operations & Maintenance
6606 Tussing Road
P.O. Box 4009
Reynoldsburg, OH 43068-9009

Regional Administrator
U.S. Nuclear Regulatory Commission
801 Warrenville Road
Lisle, IL 60523-4351

Michael A. Schoppman
Framatome ANP
1911 N. Ft. Myer Drive
Rosslyn, VA 22209

Resident Inspector
U.S. Nuclear Regulatory Commission
5503 North State Route 2
Oak Harbor, OH 43449-9760

Randel J. Fast, Plant Manager
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State - Route 2
Oak Harbor, OH 43449-9760

Dennis Clum
Radiological Assistance Section Supervisor
Bureau of Radiation Protection
Ohio Department of Health
P.O. Box 118
Columbus, OH 43266-0118

Carol O'Claire, Chief, Radiological Branch
Ohio Emergency Management Agency
2855 West Dublin Granville Road
Columbus, OH 43235-2206

Zack A. Clayton
DERR
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43266-0149

State of Ohio
Public Utilities Commission
180 East Broad Street
Columbus, OH 43266-0573

Attorney General
Department of Attorney General
30 East Broad Street
Columbus, OH 43216

President, Board of County
Commissioners of Ottawa County
Port Clinton, OH 43252

President, Board of County
Commissioners of Lucas County
One Government Center, Suite 800
Toledo, OH 43604-6506

David Lochbaum, Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006

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

The Honorable Dennis J. Kucinich, Member
United States House of Representatives
14400 Detroit Avenue
Lakewood, OH 44107

Mr. Lew Myers
Chief Operating Officer
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2
Oak Harbor, OH 43449-9760

Paul Gunter
Director Nuclear Watchdog Project
Nuclear Information & Resource Service
1424 16th Street NW Suite 401
Washington, DC 20009