

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

February 23, 2006 (5:05PM)

In the Matter of

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IA-05-053

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Dale L. Miller

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RAS 11323

**DALE L. MILLER'S ANSWER TO AND REQUEST FOR EXPEDITED
HEARING ON ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.202(b) and the provisions of the January 4, 2006 "Order Prohibiting Involvement In NRC-Licensed Activities" (the Enforcement Order) issued by the U.S. Nuclear Regulatory Commission Staff (NRC Staff), Dale L. Miller hereby provides his Answer to the Enforcement Order and his request for a hearing on the Enforcement Order. Although Mr. Miller is filing his Answer now, he reserves the right to supplement or amend his Answer after he receives a copy of the OI report number 3-2002-006 issued on August 22, 2003, and documents supporting the Enforcement Order including the transcript of his NRC Office of Investigations (OI) interview on October 22, 2002. Although the documentation may contain information material to Mr. Miller's Answer, he is electing to file his Answer now to expedite the hearing process. Without a prompt review of the Enforcement Order, Mr. Miller's future employment opportunities will be placed in severe jeopardy because he has now been excluded from an industry he faithfully served for 32 years. In accordance with 10 C.F.R. § 2.202(c)(1) he requests an expedited hearing.

II. ANSWER TO THE ENFORCEMENT ORDER

The following Answer identifies and responds to each allegation or charge made in the Enforcement Order addressing Mr. Miller's purported conduct in assisting his former employer, FirstEnergy Nuclear Operating Company (FENOC), respond to NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles" (the Bulletin) for the Davis-Besse Nuclear Power Station (Davis-Besse). To the extent the facts alleged are within Mr. Miller's personal knowledge, he affirmatively denies that they form the basis of a deliberate violation of 10 C.F.R. § 50.5(a)(2). As to facts alleged that are not within Mr. Miller's personal knowledge, he neither admits nor denies them, but leaves the NRC Staff to its burden of proof.

The Enforcement Order improperly concluded that Mr. Miller had acquired such sufficiently detailed knowledge of the condition of the Davis-Besse reactor pressure vessel (RPV) head and the limitations experienced during prior inspections, that he provided materially incomplete and inaccurate information and, therefore, engaged in deliberate misconduct when he concurred in Davis-Besse's response to the Bulletin on August 30, 2001. Mr. Miller categorically denies that his concurrence in the Bulletin response constituted deliberate misconduct because he never intentionally provided information that "he knew was not complete or accurate in all material respects to the NRC, a violation of 10 C.F.R. § 50.5(a)(2)."

Mr. Miller was Davis-Besse's Supervisor of the Regulatory Affairs (RA) Compliance Unit. He was not a principal drafter of any portion of the Bulletin response. The principal

drafting responsibility was assigned in early August 2001 to an RA contractor.¹ Mr. Miller was not directed to become involved in the Bulletin response until approximately August 17, 2001. During the 11 days from August 20 until August 30, 2001, when Mr. Miller reviewed various internal drafts of the response, he did not intentionally include or omit any material that caused incomplete or inaccurate information to be submitted to the NRC.

Because the Enforcement Order does not specifically recite each alleged violation, the following section indicates each salient allegation, followed by Mr. Miller's answer and reasons for denying the allegation. To the extent that any allegation in the Enforcement Order is not specifically addressed here, it is denied.

1. Allegation:

The Enforcement Order alleges, in substance, that Mr. Miller through the performance of his duties as a Supervisor in FENOC's Regulatory Affairs organization received several e-mails during August 2001, while FENOC was preparing the September 4, 2001 response to the NRC. These e-mails, in part, made Mr. Miller aware that the boric acid deposits on the RPV head and the RPV head service structure weep holes were an impediment to viewing all RPV head nozzle penetrations.

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller denies that his limited participation in the preparation and management of Davis-Besse's Bulletin response involved intentionally misleading conduct. Mr. Miller did not

¹ On January 19, 2006, the RA contractor was indicted in the United States District Court for the Northern District of Ohio on four counts of making false statements to the United States and aiding and abetting the making of those false statements in connection with the Bulletin responses.

become involved in the September 4, 2001 initial Bulletin response, Serial Number 2731, until August 17, 2001. By that date, the RA Licensing unit had already assigned an RA contractor to prepare the response, and had given deadlines for the description of past and future RPV head inspection details to Design Engineer Prasoon Goyal and System Engineer Andrew Siemaszko.² Mr. Miller initially was not responsible for supervising the contractor's work in responding to the Bulletin. That responsibility belonged to another RA Supervisor in Licensing. On August 17, 2001, the Director responsible for RA asked Mr. Miller to set up a meeting with other utilities to gain an understanding of how they were responding to the Bulletin, particularly with respect to future activities. Mr. Miller established a utility response group, consisting of plants with a similar control rod drive mechanism (CRDM) nozzle crack susceptibility ranking, who agreed to participate by teleconferences. Mr. Miller's primary responsibility related to the Bulletin was to conduct teleconferences with members of this response group. The primary topic of discussion during the teleconferences centered on inspection methods to be used in future outages, including nondestructive examination methods and acceptance criteria.

Mr. Miller did not receive a draft response of the Bulletin until August 20, 2001. On August 30, 2001, he reviewed and approved a draft version — notably, after the technical experts or their supervisors had signed their approval. Mr. Miller did not review and approve the final version of Serial Number 2731 that was submitted to the NRC on September 4, 2001. He was

² In a Deferred Prosecution Agreement dated November 10, 2005, Mr. Goyal admitted that a statement he made in Serial Number 2731 about RPV head inspection compliance with the Boric Acid Corrosion Control Program was false, as were statements he later made about his 1996 RPV head inspection and impediments to performing that inspection. On January 19, 2006, Mr. Siemaszko was indicted in the United States District Court for the Northern District of Ohio on five counts of making false statements to the United States and aiding and abetting the making of those false statements in connection with the Bulletin responses.

not aware of changes made after his review, and he did not receive a copy of the final submittal until after it was forwarded to the NRC.

While Mr. Miller was participating in the utility group teleconferences, he learned that FENOC would be able to conduct a detailed RPV head inspection during the upcoming 2002 refueling outage with the use of new tooling and inspection techniques. Mr. Miller was aware that Serial Number 2731 stated that boric acid had been found on the RPV head during previous outages.³ From information provided to him by a technical expert about a previously successful RPV head inspection and cleaning performed at Arkansas Nuclear One power plant (ANO), Mr. Miller believed that the configurations of the Davis-Besse and ANO RPV heads and service structures were similar enough to infer that Davis-Besse's 2002 inspection would be successful.

Mr. Miller's responsibilities in reviewing the draft Bulletin responses did not include conducting a section-by-section certification of the drafts' technical accuracy. Because of his relatively limited involvement and complete lack of subject matter expertise, Mr. Miller reasonably relied upon the expertise of the engineers responsible for the technical input, as well as their supervisors who were involved in reviewing and approving Serial Number 2731.

³ The draft version of Serial Number 2731 approved by Mr. Miller contained the following statement about the 2000 inspection: "Inspection of the RPV head/nozzles area indicated some accumulation of boric acid deposits. The boric acid deposits were located beneath the leaking flanges with clear evidence of downward flow. No visible evidence of nozzle leakage was detected. The RPV head area was cleaned with demineralized water to the greatest extent possible while maintaining the principles of As-Low-As Reasonably-Achievable (ALARA) regarding the dose. Subsequent video inspection of the cleaned RPV head areas and nozzles was performed for future reference."

2. Allegation:

The Enforcement Order alleges, in substance, that Mr. Miller's receipt of a copy of an e-mail dated August 27, 2001,⁴ questioned whether a discussion in FENOC's draft response to the Bulletin relative to a subsequent review of 1998 and 2000 inspection videotaped results should be reworded. The e-mail stated, in part: "the discussion gives an impression to the reader that we were able to look at all the CRDMS. It is very difficult to look at all the CRDMS when there is boric acid around it."

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller denies that he engaged in deliberate misconduct concerning his receipt of a copy of Mr. Goyal's August 27, 2001 e-mail, addressed to the RA contractor responsible for assembling the Bulletin response.⁵ Mr. Miller has no recollection of opening the August 27 e-mail, because he was involved in activities that kept him away from his office most of that day. He prepared for and served as subject matter expert on fuel storage issues during the site tour associated with the August 27 visit by a U.S. Senator from Ohio.

Additionally Mr. Miller, Supervisor of the RA Compliance unit, relied upon the engineers assigned to answer the Bulletin's technical questions to describe what they had seen during the earlier head inspections. Mr. Miller had no reason to doubt that the information provided in Serial 2731 by the technical experts was complete and accurate. Mr. Miller had no

⁴ Although the Enforcement Order states that Mr. Goyal's e-mail was dated August 28, 2001, Mr. Miller and five others received a copy of an August 27, 2001 e-mail Mr. Goyal addressed to the RA contractor. Mr. Miller presumes that August 27 is the correct date of the referenced e-mail; if not, he reserves the right to amend his Answer.

⁵ Mr. Goyal sent the August 27, 2001 e-mail to the RA contractor; however, he also copied Mr. Siemaszko, a member of the Licensing unit, the Licensing Unit Supervisor, the Regulatory Affairs Manager, and the Alloy 600 Team leader.

independent basis to challenge the information provided by the engineers with regard to previous RPV head inspections or the amount of boric acid found and left after cleaning, because he had never been involved in any of these field activities.

Also on August 27, 2001, the RA contractor forwarded an e-mail memorandum to Mr. Miller and six others. He wrote that he was deleting a prior draft reference to 90 percent of the nozzles being inspected "to ensure that we state that not all of the head was accessible or inspected." Mr. Miller did not challenge the RA contractor's conclusion that it was more accurate to refrain from stating a specific number that could not be verified by the responsible engineer.

Mr. Goyal's August 27, 2001 e-mail did not provide a basis to question the accuracy of the Bulletin responses. Mr. Miller knew that the reasons Messrs. Goyal and Siemaszko were working with the RA contractor was to make sure the language was correct. The e-mail would have informed him that the technical experts were performing their assigned duties.

3. Allegation:

The Enforcement Order alleges, in substance, that Mr. Miller's receipt of a copy of an e-mail dated August 30, 2001, provided notice of inaccuracies in the Bulletin response. The author stated: "I have not seen any EWR to cut openings in the service structure in 13th RFO. If we need these it should be funded and P.O. issued to Framatome immediately. We do not say anywhere in our response to the bulletin that inspection thru the mouse holes creates an impediment [sic] for 100% visual examination. (management need [sic] to know this). Even with crawler we may not be able to inspect the nozzles at the top of the head because of only 2" gap." The Enforcement Order further alleges that Mr. Miller stated during his OI interview that if Mr. Goyal were concerned about addressing impediments before the licensee issued the Bulletin response, he should have brought his concern to his management chain.

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller denies that he engaged in intentional misconduct in connection with his receipt of a copy of this e-mail.⁶ Mr. Miller has no recollection of whether he ever opened or read Mr. Goyal's e-mail. Even if Mr. Miller had seen it, the e-mail was forward looking for three reasons: (1) Mr. Goyal sent the e-mail *after* he had already reviewed and approved the Bulletin response;⁷ (2) the e-mail expressed Mr. Goyal's concerns about the upcoming 2002 RPV head inspection;⁸ and (3) the e-mail addressed an Engineering Work Request for the 2002 outage.

Mr. Miller was aware from his utility response group participation that ANO had already successfully performed a remote RPV head inspection and cleaning through its weep holes. ANO's inspection was similar to the inspection Davis-Besse would have to perform. Davis-Besse's Alloy 600 Team leader had recognized that the two plants' RPV head and service structures had similar configurations, and Davis-Besse could use the remote techniques in 2002 that ANO had used, enhanced further by use of a "crawler camera" that would be supplied by Framatome ANP. Mr. Miller believed, therefore, that it would be possible to conduct an adequate inspection through the weep holes, and he did not engage in deliberate misconduct by

⁶ Mr. Goyal addressed his e-mail to Mr. Siemaszko and the head of the Alloy 600 Team, with copies to the RA contractor and to Mr. Miller.

⁷ Mr. Goyal reviewed and approved Serial Number 2731 on August 28, 2001.

⁸ Serial Number 2731 stated on page 7 of 19 that FENOC was providing an interim response about its inspection plans for the next outage, and that as inspection results became available from other utilities as well as advances in technology and remote tooling, FENOC would provide a final response by January 29, 2002.

agreeing that inspection through the weep holes was possible in the 2002 refueling outage. Mr. Goyal's e-mail, had he seen it, would not have altered his conclusion.

4. Allegation:

The Enforcement Order alleges, in substance, that Mr. Miller told OI that he looked up the word "impediment" in the dictionary upon being informed of the size of the RPV head service structure weep holes, the two inch gap between the RPV head and the insulation at the top of the RPV head, the RPV curvature, and the inspection limitations resulting from the presence of boron deposits.

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller recalls telling OI that he had looked up the word "impediment" in the dictionary — *in preparation for his October 22, 2002 OI interview* — not when he was reading Bulletin response drafts in 2001. Clearly missing from the Enforcement Order is the key information Mr. Miller relayed in his second OI/Department of Justice interview in 2004. Mr. Miller stated that he had looked up the definition to prepare for his first OI interview. Mr. Miller did not engage in any misleading "wordsmithing" in connection with Serial Number 2731, or deliberately craft phrases to give the NRC the false impression that the entire head could be inspected.⁹ With this allegation, the Enforcement Order mischaracterizes both Mr. Miller's Bulletin response role and his statements to OI.

⁹ Throughout his 2002 OI interview, Mr. Miller vainly attempted to explain that he was "on the outskirts" of Serial Number 2731's preparation, and that he did not draft the response.

5. Allegation:

The Enforcement Order alleges, in substance, that Mr. Miller's response to an OI question discussing what could be credited as a qualified visual inspection indicates that he had sufficient knowledge of prior inspections to know FENOC's response to the Bulletin was incomplete and inaccurate.

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller denies that he had any additional, material knowledge about the condition of the RPV head and the limitations experienced during prior inspections beyond the information provided by the knowledgeable technical experts who contributed to, reviewed, and approved the Bulletin response.

Moreover, the issue of what constitutes a "qualified visual inspection" demonstrates Mr. Miller's innocence of the wrongdoing alleged. Licensees were not required to perform qualified visual inspections of CRDM nozzles prior to issuance of Bulletin 2001-01. Such inspections were not a requirement when the 10RFO, 11RFO and 12RFO RPV head inspections were conducted. Indeed, the Bulletin was the NRC Staff's vehicle to impose a new inspection requirement on licensees. Mr. Miller's discussion of qualified visual inspections bears no relevance to his knowledge of the adequacy or detail of prior RPV head inspections.

6. Allegation:

The Enforcement Order charges, in substance, that Mr. Miller's purported actions in violation of 10 C.F.R. § 50.5(a)(2) placed FENOC in violation of 10 C.F.R. § 50.9.

Answer:

Mr. Miller denies that he violated 10 C.F.R. § 50.5(a)(2) by placing FENOC in violation of its obligation under 10 C.F.R. § 50.9 to provide the NRC with information that was complete and accurate in all material respects.

Reason for Denial:

Mr. Miller did not draft Serial Number 2731, did not make Bulletin response preparation assignments, and was not responsible for its technical accuracy. Mr. Miller did not suggest or make any material changes or revisions to the document. Mr. Miller's primary responsibility during the Bulletin response preparation was to establish a utility response group and conduct teleconferences regarding future RPV head inspections. Mr. Miller reviewed and approved a draft version of the Bulletin on August 30, 2001, subsequent to the review and approval of the technical experts; however, Mr. Miller did not review and approve the final version of the response submitted to the NRC on September 4, 2001. Mr. Miller did not have any first-hand knowledge of incomplete or inaccurate communications, and he did not knowingly concur in any incomplete or inaccurate communications made to the NRC.

Further, even if Mr. Miller had some role in providing inaccurate information in FENOC's initial Bulletin response, which he denies, FENOC personnel believed that they had cured the error in the October 17, 2001 submittal, in which Mr. Miller also concurred. The October 17, 2001 letter stated that it was providing updated and additional information.¹⁰ Hence,

¹⁰ Letter from G. Campbell, Vice President, Nuclear, FirstEnergy Nuclear Operating Company, to U.S. Nuclear Regulatory Commission Document Control Desk, "Serial 2735 - Supplemental Information in response to Bulletin 2001-01, 'Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles'" (October 17, 2001).

FENOC was not in violation of 10 C.F.R. § 50.9, because it promptly corrected the misperception. Accordingly, even if the facts alleged were true, they do not support a violation.

7. Allegation:

The Enforcement Order alleges, in substance, that the public health and safety require that Mr. Miller be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of the Order.

Answer:

Mr. Miller denies the allegation.

Reason for Denial:

Mr. Miller denies that he presents a risk to the public health and safety in the manner stated in the Enforcement Order. He was employed by FENOC and its predecessors for approximately 32 years. In 2000, he was promoted to Supervisor of the RA Compliance Unit at Davis-Besse. In September of 2002, Mr. Miller accepted the discipline imposed by FENOC for his failure to meet expectations during the Bulletin response period, and he was transferred to the Perry Nuclear Power Plant (Perry) as an RA staff consultant. Mr. Miller resigned from FENOC in 2004. Since leaving FENOC and until the issuance of the January 4, 2006 Enforcement Order, Mr. Miller was employed as a consultant in the nuclear industry.

Mr. Miller always had an excellent employment record at the Davis-Besse and Perry sites. He also voluntarily cooperated with *every* investigation of the RPV head degradation issues including FENOC internal investigations, NRC inspection activities, and the OI and Department of Justice investigations. Mr. Miller's employment record and history of

cooperation with all investigations to date demonstrate that he has always conducted himself with the goal of protecting the health and safety of the public.

The NRC was aware of Mr. Miller's continued employment in the nuclear industry from the time OI issued its report in August of 2003. The NRC did not then seek to remove Mr. Miller from NRC-licensed activities. If Mr. Miller had posed any actual risk to the public health and safety, the NRC would have removed him from the nuclear industry at that time. Consequently, the Enforcement Order is a punitive remedy, rather than a measure chosen to protect the health and safety of the public. Even if, for the sake of argument, the NRC Staff should prevail, the harsh sanction imposed against Mr. Miller is inconsistent with NRC enforcement policy and precedent.

For 32 years Mr. Miller has faithfully shown that he has both the capability to protect the public health and safety and that he could be relied upon to do so. The overall level of protection of the health and safety of the public, therefore, will not be increased by Mr. Miller's removal from involvement in NRC-licensed activities for five years. Because the Enforcement Order has erroneously and unfairly targeted Mr. Miller to receive far harsher discipline than supported by his exemplary prior behavior and his limited involvement in reviewing Serial Number 2731, the Order should be rescinded.

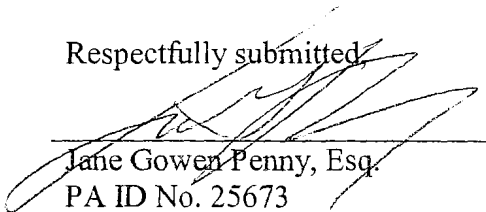
III. DEMAND FOR EXPEDITED HEARING

In accordance with the provisions of 10 CFR § 2.202(c)(1), Mr. Miller respectfully requests an expedited hearing on whether the Enforcement Order should be sustained.

IV. CONCLUSION

In summary, Mr. Miller has been erroneously and unfairly targeted by the NRC, as someone who intentionally provided incomplete and inaccurate information in Serial Number 2731, in violation of 10 C.F.R. § 50.5(a)(2). The January 4, 2006 Enforcement Order should not have been issued, because it wrongly attributes to Mr. Miller a primary role in, detailed knowledge of, and influence over the contents of the Bulletin response. Almost two and a half weeks before Mr. Miller became involved, other Davis-Besse personnel had already tasked the RA contractor with responsibility for the Bulletin response and assigned experienced engineers to prepare responses to the NRC's technical questions. Serial Number 2731 was substantially completed before Mr. Miller first received a draft response for review on August 20, 2001. Mr. Miller did not write any sections of Serial Number 2731; moreover, he did not perform or promote misleading editorial changes, or cause anyone to conduct his drafting responsibilities in a deliberately defiant or reckless manner. Because Mr. Miller did not violate 10 C.F.R. § 50.5(a)(2)'s prohibition against deliberate misconduct, he requests an expedited hearing on the January 4, 2006 Enforcement Order and requests that the Order be rescinded.

Respectfully submitted,



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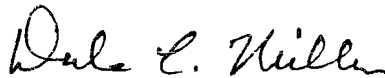
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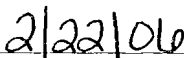
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UNSWORN DECLARATION

I, **Dale L. Miller**, subject of the January 4, 2006 Enforcement Order,
declare under penalty of perjury that the facts set forth in the foregoing "Answer
To and Request for Hearing" are true and correct to the best of my knowledge,
information and belief. This declaration is made pursuant to Title 28 U.S.C. §
1746.



Dale L. Miller
[Home Address Deleted
Under 10 C.F.R. § 2.390(a)]



Date

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

Dale L. Miller

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IA-05-053

CERTIFICATE OF SERVICE

I hereby certify that copies of "Dale L. Miller's Answer to and Request for Expedited Hearing" were served upon the persons listed below by U.S. mail, first class, postage prepaid, and by facsimile as indicated by an asterisk (*), on this 23rd day of February, 2006.

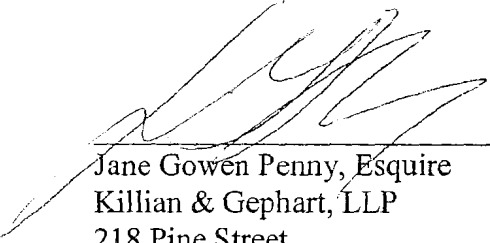
Secretary of the Commission*
Attn: Rulemakings and Adjudications Staff
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February 23, 2006

Via Facsimile & Regular Mail

Secretary of the Nuclear Regulatory Commission
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Washington, DC 20555

Via Facsimile & Regular Mail

Sara E. Brock, Counsel for NRC Staff
U.S. Nuclear Regulatory Commission.
Office of General Counsel
Washington, DC 20555

**Re: Dale L. Miller
IA-05-053**

To the Secretary & Attorney Brock:

Enclosed please find Dale L. Miller's Answer and Hearing Request. I will be forwarding the original Answer along with two (2) copies to the Secretary's office via first class mail with copies to all on the service list.

Very truly yours,

Jane G. Penny

JGP/cl
Enclosures

cc: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission
Assistant General Counsel for Materials, Litigation and Enforcement
Regional Administrator, NRC Region III
Dale L. Miller
