

April , 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
DALE L. MILLER

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Docket No. IA-05-053
ASLBP No. 06-846-02-EA

AFFIDAVIT OF GUY P. CAPUTO

I, Guy P. Caputo, being first duly sworn, do hereby state as follows:

1. I am employed as Director of the Office of Investigations (OI) of the Office of the Executive Director for Operations (EDO). My supervisory responsibilities include oversight of the NRC staff's investigation of allegations of wrongdoing by employees of FirstEnergy Nuclear Operating Company (FENOC) at the Davis-Besse Nuclear Power Plant.

2. I am aware that the Staff must make all disclosures required by 10 C.F.R. § 2.336 in the above captioned proceeding no later than April 26, 2006.

3. Among the documents subject to disclosure under 10 C.F.R. § 2.336 is the Report of Investigation Davis-Besse Nuclear Power Plant produced by the Region III OI Field Office.

4. I have personally reviewed the Report of Investigation and have determined, in accordance with the guidance in Management Directive 3.4, that it contains pre-decisional information concerning the Staff's investigation of wrongdoing by FENOC employees at the Davis-Besse Nuclear Power Plant. The Report of Investigation contains the Staff's analyses, recommendations, opinions, or evaluations, and may not necessarily reflect the final agency position with respect to matters discussed therein. This material is concentrated in portions of the Report entitled "Agent's Analysis." These portions of the report in particular comprised part

of the deliberative process necessary to the Staff's review of the allegations of wrongdoing by FENOC employees at Davis-Besse Nuclear Power Plant.

5. Further, I have determined that disclosure of the "Agent's Analysis" portions of Report of Investigation could result in harm to the agency, in that it would (a) disclose the preliminary views of individual Staff members and/ or the Staff prior to reaching a final agency decision, and could thus create confusion as to the actual policy or views of the NRC staff; (b) hinder the efficiency of the Staff, in that forced disclosure of their internal discussion could serve to chill future deliberations and could interfere with its ability to engage in free exchange of opinions and analyses prior to publishing our final decisions; and (c) imply or suggest incorrectly that the opinions of Staff members involved in these communications were actually final decisions of the agency.

6. Accordingly, I formally invoke the deliberative process privilege with respect to the portions of the Report of Investigation entitled "Agent's Analysis."

7. I hereby certify that the foregoing is true and complete to the best of my knowledge, information, and belief.

/RA/

Guy P. Caputo

Subscribed and sworn to before me
this 25 day of April, 2006

Circe E. Martin
Notary Public

My Commission Expires: March 1, 2007