

## PRELIMINARY NOTIFICATION- REGION III

May 20, 2010

### PRELIMINARY NOTIFICATION OF EVENT OR UNUSUAL OCCURRENCE -- PNO-III-10-008

This preliminary notification constitutes EARLY notice of events of POSSIBLE safety or public interest significance. The information is as initially received without verification or evaluation, and is basically all that is known by the Region III staff on this date.

#### **Facility**

Davis Besse Nuclear Power Station  
First Energy Nuclear Operating Company  
Oak Harbor, OH  
Docket: 50-346  
License: NPF-3

#### **Licensee Emergency Classification**

Notification of Unusual Event  
 Alert  
 Site Area Emergency  
 General Emergency  
 Not Applicable

SUBJECT: PUBLIC AVAILABILITY OF TWO NRC EMPLOYEE DIFFERING  
PROFESSIONAL OPINIONS CONCERNING PAST ISSUES AT DAVIS-BESSE

#### DESCRIPTION:

On May 20, 2010, the NRC is making publically available two agency reviews of Differing Professional Opinions (DPOs) submitted by an NRC employee. Both DPOs are associated with past agency decisions concerning potential violations of the NRC requirements for complete and accurate information in connection with two FENOC submittals to the NRC in 2005 and 2007. These DPOs deal with concerns over past issues at Davis-Besse and are not associated with the current reactor pressure vessel head issues at the plant.

The NRC places high value on the opinions of its employees, thereby ensuring the continuation of the NRC's strong open collaborative work environment. There are a number of vehicles for agency employees to express opinions that differ from the official agency position. The DPO program is the most formal of these vehicles. It enables employees to present their differing views on an official NRC position to the decision-makers in the agency with the goal of changing that official position. DPOs are considered to be internal agency documents. However, they will be publically released upon the DPO submitter's request.

The first DPO involved a Davis-Besse September 2005 response to an NRC Notice of Violation and Imposition of Civil Penalty associated with the 2002 reactor pressure vessel head degradation event. The DPO submitter contended that a portion of the above response contained incomplete and inaccurate information. The DPO submitter further contended that FENOC should have verified the content of the statement in question in accordance with their internal procedure, which had been recently revised by FENOC in response to prior NRC concerns with complete and accurate information. The submitter stated that both of these concerns should have been cited by the NRC as violations.

The NRC shared the DPO submitter's concerns regarding FENOC's failures to provide the NRC with complete and accurate information associated with the 2002 event, as evidenced by the agency issuing FENOC the largest fine in NRC history in connection with this event and the company's failure to be forthcoming with the NRC. After multiple levels of agency review of the specific issues raised by the submitter, the NRC determined that the portion of FENOC's

response in question was an opinion and not a statement of fact. Therefore, it could not and did not have the ability to interfere with the NRC's regulatory process or influence an agency decision-maker, and as a result, did not constitute a violation of NRC requirements for providing complete and accurate information. The issue of adherence to procedures also was determined to not constitute a violation.

The second DPO involved a response from Davis-Besse in May 2007 to the NRC's Request for Information (RFI) involving the Exponent Report commissioned by FENOC as part of its insurance claim associated with the 2002 event. The report provided a different hypothesis on the rate of head degradation than what was previously determined for the 2002 event. The RFI requested copies of all technical assessments of the Exponent Report provided to Davis-Besse. The DPO submitter contended that the May 2007 response did not include an internal FENOC "draft assessment" document. The submitter stated that the failure to provide this document with FENOC's response to the RFI constituted a violation of NRC requirements for complete and accurate information.

The NRC shared the submitter's concerns regarding the quality of information FENOC provided to the NRC in connection with the Exponent Report. The NRC identified deficiencies in the company's submittals to the NRC, but did not identify any violations. Based upon the NRC's overall concerns in this matter, a Confirmatory Order was issued on August 15, 2007, which required FENOC to perform a wide range of corrective actions to address its lack of regulatory sensitivity in communicating with the NRC.

The agency determined that not providing the NRC with the draft assessment referenced by the submitter did not constitute a violation of NRC requirements for a number of reasons: it was a draft document and the NRC does not require submittal of draft documents that may be further revised; the information contained in the document was submitted to the NRC shortly after in response to the NRC's Demand for Information (a more formal vehicle requiring the utility to submit all information of regulatory significance); and it did not contain a technical assessment of the Exponent Report, which was the focus of the NRC's RFI. As such, the draft assessment did not have the ability to interfere with the NRC's regulatory process.

The materials associated with both of these DPOs can be obtained by contacting the NRC Region III Office of Public Affairs or on the NRC's web site, in the electronic document system: <http://www.nrc.gov/reading-rm/adams/web-based.html>

To locate DPO documents associated with the 2005 Davis-Besse response to the NOV, enter ML101380568 as a search term. To locate the DPO documents involving the 2007 Davis-Besse response to the RFI, enter ML101380407 as a search term.

The State of Ohio has been informed.

The information in this preliminary notification has been reviewed with licensee management and is current as of 8:00 a.m. (CDT) May 20, 2010.

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CONTACTS:  
Viktoria Mitlyng  
630/829-9662