

October 3, 1988

Docket No. 50-346
Serial No. DB-88-054

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Mr. Donald C. Shelton
Vice President - Nuclear
Toledo Edison Company
Edison Plaza - Stop 712
300 Madison Avenue
Toledo, Ohio 43652

Dear Mr. Shelton:

SUBJECT: DAVIS-BESSE UNIT NO. 1 - TEMPORARY EXEMPTION FROM THE SCHEDULAR REQUIREMENTS OF THE PROPERTY INSURANCE RULE EFFECTIVE OCTOBER 4, 1988 (10 CFR 50.54(w)(5)(i))

The Commission has issued the enclosed temporary exemption from the schedular requirements of the property insurance rule effective October 4, 1988 (10 CFR 50.54(w)(5)(i)) for the Davis-Besse Nuclear Power Station, Unit No. 1. This part of the rule requires licensees to obtain insurance policies that prioritize insurance proceeds for stabilization and decontamination after an accident and provide for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose.

The Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

The Commission, pursuant to 10 CFR 50.12(a), hereby grants a temporary exemption from the schedular requirements of 10 CFR 50.54(w)(5)(i). This temporary exemption is valid until April 1, 1989 or until such time as action on this rulemaking is completed.

In granting the exemption, the staff has determined that this action is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

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Mr. Donald Shelton

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October 3, 1988

A copy of this exemption is being filed with the Office of the Federal Register for publication.

Sincerely,

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Albert W. De Agazio, Sr. Project Manager
Project Directorate III-3
Division of Reactor Projects - III,
IV, V and Special Projects

Enclosure:
As stated

cc w/enclosure:
See next page

Office: LA/PDIII-3
Surname: Pkreutzer
Date: 9/29/88

for *WAD*
PM/PDIII-3
A DeAgazio/tg
09/29/88

JHaxxon
PD/PDIII-3
KPerkins
9/29/88

m
(A)AD/DRSP
MVirgilio
10/12/88

Office: (A)AD/DRSP
Surname: Gholahan
Date: 10/13/88

Mr. Donald C. Shelton
Toledo Edison Company

Davis-Besse Nuclear Power Station
Unit No. 1

cc:

David E. Burke, Esq.
The Cleveland Electric
Illuminating Company
P. O. Box 5000
Cleveland, Ohio 44101

Radiological Health Program
Ohio Department of Health
1224 Kinnear Road
Columbus, Ohio 43212

Mr. Robert W. Schrauder
Manager, Nuclear Licensing
Toledo Edison Company
Edison Plaza
300 Madison Avenue
Toledo, Ohio 43652

Attorney General
Department of Attorney
General
30 East Broad Street
Columbus, Ohio 43215

Gerald Charnoff, Esq.
Shaw, Pittman, Potts
and Trowbridge
2300 N Street N.W.
Washington, D.C. 20037

Mr. James W. Harris, Director
(Addressee Only)
Division of Power Generation
Ohio Department of Industrial Relations
2323 West 5th Avenue
P. O. Box 825
Columbus, Ohio 43216

Regional Administrator, Region III
U.S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois

Ohio Environmental Protection Agency
361 East Broad Street
Columbus, Ohio 43266-0558

Mr. Robert B. Borsum
Babcock & Wilcox
Nuclear Power Generation Division
Suite 525, 1700 Rockville Pike
Rockville, Maryland 20852

President, Board of
County Commissioners of
Ottawa County
Port Clinton, Ohio 43452

Resident Inspector
U.S. Nuclear Regulatory Commission
5503 N. State Route 2
Oak Harbor, Ohio 43449

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

Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are ... Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, Section 50.12(a)(2) provides inter alia, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever ... (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of Section 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Toledo Edison Company and The Cleveland Electric Illuminating Company are exempt from the requirements of 10 CFR 50.54(w)(5)(f) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(f), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38388).

This exemption is effective upon issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Gary M. Holahan, Acting Director
Division of Reactor Projects III,
IV, V, and Special Projects
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 3rd day of October, 1988.