

January 29, 1990

Docket No. 50-346

Mr. Donald C. Shelton  
Vice President - Nuclear  
Toledo Edison Company  
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Dear Mr. Shelton:

SUBJECT: EXEMPTION TO 10 CFR PART 50, APPENDIX J, SECTION III.D.1(A)  
(TAC NO. 66700)

The Commission has issued the enclosed Exemption from certain requirements of Appendix J to 10 CFR Part 50 for the Davis-Besse Nuclear Power Station, Unit 1, in response to your letter dated November 20, 1987. The subject regulation requires that "... a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspections." The Exemption permits the Type A tests to be continued to be conducted at the 40-month  $\pm$  10-month interval presently required by the Davis-Besse Technical Specifications but no longer requires that the third test of each set of three Type A tests be conducted during the same refueling outage when the 10-year inservice inspection (ISI) is conducted. However, this Exemption does not alter the existing requirement in Section III.D.1(a) of Appendix J that three ILRTs be performed during each 10-year service period.

The Exemption is enclosed. The Davis-Besse Technical Specifications will be revised shortly after this.

A copy of the enclosed Exemption is being filed with the Office of the Federal Register for publication.

Sincerely,  
/s/

Thomas V. Wambach, Sr. Project Manager  
Project Directorate III-3  
Division of Reactor Projects - III,  
IV, V and Special Projects  
Office of Nuclear Reactor Regulation

Enclosure: As stated

cc: See next page

\*Previously concurred

\*\*Subject to changes marked in exemption-JMoore

DOCUMENT NAME: 66700 EXEMPTION

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CMcCracken

JHannon

Date: 1/4 /90

1/4 /90

1/4/90

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Surname:

BMB\*\*

JZwolinski

GHolahan

Date:

1/11/90

1/23/90

1/25/90

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Mr. Donald C. Shelton  
Toledo Edison Company

Davis-Besse Nuclear Power Station  
Unit No. 1

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

TOLEDO EDISON COMPANY  
THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

(Davis-Besse Nuclear Power Station,  
Unit No. 1)

Docket No. 50-346

EXEMPTION

I.

The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), are the holders of Facility Operating License No. NPF-3 (the license) which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Ottawa County, Ohio.

II.

By letter dated March 7, 1988, the Toledo Edison Company (the licensee) applied for an amendment to Operating License NPF-3 to change certain provisions of the Technical Specifications. The licensee had previously requested an exemption from the Commission's regulations in its letter dated November 20, 1987. The requested exemption is from a requirement in Appendix J to 10 CFR Part 50 which requires that certain surveillance tests be conducted during the same refueling outage.

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The specific requirement is contained in Section III.D.1(a) of Appendix J, 10 CFR Part 50, and states in part that "... a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections." The Type A tests are defined in Section II.F of Appendix J as those "... tests intended to measure the primary reactor containment overall integrated leakage rate... at periodic intervals..." The 10-year inservice inspection is that series of inspections performed every 10 years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The time required to perform the integrated leakage rate tests (ILRTs) necessitates that they be performed during refueling outages. The time interval between ILRTs should be 40 months based on performing three such tests during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months is typically authorized in the technical specifications (TSs) issued with an operating license to permit flexibility in scheduling the ILRTs.

The third of the ILRT set of three tests for the Davis-Besse plant was successfully conducted in September 1988 during the last refueling outage (i.e., the fifth refueling outage). The Davis-Besse TSs require that the next ILRT be conducted in January 1992 but no later than November 1992. This will coincide with the seventh refueling outage which will probably start in January 1992.

Due to the time required to conduct it, the 10-year ISI required by 10 CFR 50.55a also must be conducted during a refueling outage. This ISI

will be performed during the sixth refueling outage starting in February 1990. If the requested exemption is not granted, Section III.D.1(a) of Appendix J would require an additional ILRT to be performed in April 1990, about 19 months after the previous ILRT. This interval would be considerably shorter than the minimum interval of 30 months specified in the Davis-Besse TSs. More importantly, this interval would not be consistent with either the intent or the underlying purpose of the rule which requires that these Type A tests "... be performed at approximately equal intervals during each 10-year service period." (Section III.D.1(a) of Appendix J).

The licensee addressed this issue in its exemption request dated November 20, 1987 in which it cites from Appendix J that "the purpose of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications..." The licensee asserts and the NRC staff agrees that the Type A test conducted in September 1988 met the underlying purpose of the rule in that the required overall leak-tightness of the primary containment was demonstrated. Accordingly, it is not necessary to conduct another Type A test in the forthcoming refueling outage to meet the intent of the rule. Doing another ILRT in the forthcoming refueling outage would not add significantly to the assurance that the overall leakage rate of the primary containment and its penetrations remain within the value specified in the Davis-Besse TSs and would certainly not meet the intent of the rule to conduct these tests at approximately equal intervals as cited above.

On this basis, we find that the licensee has demonstrated that the "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule..." [10 CFR 50.12(a)(2)(ii)].

Each of these two tests (i.e., the Type A test and the 10-year ISI) is independent of each other and provides assurances of different plant characteristics. The Type A tests assure the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR Part 100. The 10-year ISI provides assurance of the structural integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. Accordingly, there is no safety-related concern associated with their coupling in the same refueling outage.

On this basis, the NRC staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A test from the 10-year ISI will not present an undue risk to the public health and safety.

### III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect to one of the requirements of 10 CFR Part 50, Appendix J, Section III.D.1(a):

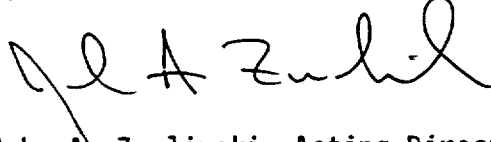
The Davis-Besse Nuclear Power Station, Unit 1 Technical Specifications may be revised to require that the ILRTs be performed solely according to the  $40 \pm 10$ -month frequency, not in conjunction

with the 10-year inservice inspection. This Exemption does not alter the existing requirement that three ILRTs be performed during each 10-year service period.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment. (55 FR 2721).

This Exemption is effective upon issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read 'John A. Zwolinski', is written over the typed name.

John A. Zwolinski, Acting Director  
Division of Reactor Projects III, IV,  
V and Special Projects  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland  
this 29th day of January, 1990