

August 29, 2002

Mr. John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: COMMENTS ON PROPOSED DIRECTOR'S DECISION ON PETITION
PURSUANT TO 10 CFR 2.206 REGARDING SAFETY AT DAVIS-BESSE
NUCLEAR POWER PLANT**

Dear Mr. Zwolinski:

By letter dated August 16, 2002, you provided our coalition with the proposed Director's Decision on the petition we submitted on April 24, 2002. As we understand it, the primary reasons for proposing to deny our petition are:

1. The NRC established the Davis-Besse Inspection Manual Chapter (IMC) 0350 Oversight Panel on May 3, 2002, to coordinate NRC's efforts prior to and subsequent to restart of the troubled facility.
2. The NRC established the Davis-Besse Reactor Vessel Head Degradation Lessons-Learned Task Force (LLTF) on May 15, 2002, to examine NRC process issues related to the head damage.
3. The plant owner established a Restart Station Review Board, Engineering Assessment Board, and Restart Overview Panel that include independent experts to oversee various activities at the troubled facility.
4. The precedent we cited—Millstone in 1996—is sufficiently different from Davis-Besse as to preclude comparable NRC response.

We fail to see how, either individually or collectively, these four measures provide equivalent assurances to the actions requested in our petition. We will specifically address each of the four primary reasons specified by the NRC and then provide you with some additional relevant points.

1. **0350 Panel:** The 0350 Panel provides for meaningful public participation and has contributed to the public's understanding of efforts relating to restart of the troubled facility. Mr. John A. Grobe and the other members of the panel have taken positive steps including conducting public meetings in the evenings to encourage broader attendance and transcribing meetings so that people unable to attend can still benefit from the dialogues. We appreciate and welcome these and many other measures taken by the 0350 Panel.

Our concern with the 0350 Panel is therefore not what it is doing, but rather what it cannot do. As Mr. Grobe articulated during the public meeting on August 15th regarding the management root cause assessment, the technical problems at Davis-Besse are easy to resolve. The non-technical problems pose the greatest difficulty. We agree.

We now know that the NRC staff and management built an incredibly strong technical argument for ordering Davis-Besse to be shut down by December 31, 2001, for CRDM nozzle inspections. We also know that this overwhelming technical argument was not successful in causing the plant to be shut down. As a direct consequence of the NRC's failure to act on its own regulations and guidance documents, the plant operated for an additional six weeks in what Mr. James Dyer characterized as an "unacceptable" condition.

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Given that the NRC staff and management struggled last year when faced with a technical problem, we are therefore properly concerned about the NRC's performance when faced with what it readily concedes is an even larger challenge. We felt, and still feel, that an independent team looking over the shoulders of the plant's workers and NRC inspectors was the best way to satisfy those concerns.

2. **Lessons-Learned Task Force:** The LLTF is a sham. We give it zero credit, at most, towards meeting the objectives of our petition. As coalition members David Lochbaum and Paul Gunter have identified in separate letters to the NRC, Dr. Edwin Hackett (the LLTF's Assistant Team Leader) served as the NRC Office of Research's prime reviewer of the draft Davis-Besse shutdown order last year. He is hardly unbiased and should not be participating in an "independent" task force assigned to identify lessons learned.

More troubling to us, however, is the way the LLTF interfaced with the public. Paul Gunter, a coalition member, submitted a Freedom of Information Act request dated April 16, 2002, for documents related to the NRC's decision last fall to defer the CRDM nozzle inspection at Davis-Besse. Those documents bear directly upon the issues before the LLTF. But the NRC has not yet released the documents FOIA'ed by Mr. Gunter. Yet the LLTF has discontinued its meetings with the public. Thus, we were denied meaningful involvement in the sham public meetings conducted by the LLTF because the NRC failed to release documents in a timely manner.

On a related note, at least two of our coalition members (Jim Riccio and Paul Gunter) attempted to participate in the LLTF public meeting conducted June 19th at NRC headquarters in Rockville. Although the public meeting notice indicated that the public could participate via telephone call-in, the NRC staff conducting the meeting knew from its beginning that the telephone link was inoperative and that several persons were therefore unable to participate. Rather than postponing the meeting until the telephone link could be restored or scheduling a follow-up meeting, the LLTF proceeded with the meeting, checked off the box showing that a public meeting had been conducted, and folded its tent.

3. **FENOC Panels:** While we have heard considerable talk about the various panels formed by FirstEnergy to look over its shoulders, the alleged panel members such as former NRC Executive Director for Operations Joe Callan have been seen in public less frequently than Jimmy Stewart's six-foot rabbit Harvey. Mr. Callan's ghost squadron may be doing fantastic work, but there's no publicly available evidence to demonstrate it.

The seventh and eighth items requested in our petition explicitly dealt with public access to the products by the independent team. We requested that the team's work be documented in a publicly available report and that the team present its findings to the NRC in a public meeting.

We presently lack assurance that any products from the various FENOC panels will be made publicly available. The proposed Director's Decision contains neither explicit nor implicit assurances. The company's Return to Service Plan, cited in the proposed Director's Decision, is equally silent. For example, the Restart Action Plan described on pages 12 and 13 outline the roles to be played by several of the FENOC panels, but never commits to making any of their products publicly available.

From our perspective, "secret" independent verification equates to non-existent independent verification. We sought public access to the independent team's findings in our petition and will not be placated by rumors about Mr. Stewart's friend Harvey.

Even the NRC must realize that FirstEnergy not only destroyed the vessel head at Davis-Besse, they destroyed their credibility and integrity. Consequently, stand-alone FENOC review panels are presently untrustworthy. The FENOC "Management and Human Performance Root Cause Analysis" as presented on August 15, 2002, admitted that the utility repeatedly placed electricity production ahead of reactor safety analysis and its corrective action programs over an extended period of years. A reorganized management now claims to have captured and bounded the reasons for such deviant behavior. However, the "humbled" utility did not provide a complete analysis of its human performance by failing to address how and why executives, senior managers as well as plant personnel did not adequately identify and accurately document nonconforming conditions at Davis-Besse over this extended period of years. The veracity of company reporting to the NRC on technical issues that violated the station's licensed condition and jeopardized public health and safety is seriously eroded by FENOC misrepresentations of material fact regarding actual plant conditions. For example, FENOC briefed the Commissioners' Technical Assistants on October 11, 2001, on CRDM vessel head penetration cracking. FENOC told the Commissioners' Technical Assistants that "All CRDM penetrations were verified to be free from characteristic boron deposits using video recordings from the previous refueling outage. These videos were made before and after cleaning the head."

In fact contrary to FENOC claims, the uppermost region of the vessel head including four CRDM nozzle penetrations were never inspected and therefore could not be verified to be free of boron deposits. Even more, the company could not have inspected the region because FENOC personnel had not thoroughly cleaned the vessel head as also reported to the NRC instead leaving an accumulation of more than 900 pounds of hardened boron crystal over the damaged vessel head area.

The credibility of FENOC is so damaged by such misrepresentations it is unreasonable for the public to place further confidence in the veracity of past, present and future licensing documentation to be used for reactor restart without verification by independent party (VIP). The VIP is essential in establishing the authenticity and accuracy of FENOC analysis of systems, structures and components at the Davis-Besse nuclear power station. Such an independent party could provide verification of FENOC analysis without the corporate influence of meeting a production schedule that admittedly contributed to the extensive damage to the vessel head and the integrity of the company.

It is not paranoia by the public to have doubts about FirstEnergy. Members of the coalition are aware of wide-ranging examinations by the NRC's Office of Investigations (OI) of possible wrong-doing on the part of FirstEnergy. We have strong reason to believe that OI is pursuing evidence that videotapes shown to the NRC last fall by FirstEnergy were doctored, that FirstEnergy deliberately withheld relevant information—such as the now infamous picture of the reactor vessel head during RFO12 with reddish boric acid stains from the service platform inspection ports—from the NRC staff, and that records were falsified. Given that the NRC itself has grave doubts about the integrity of FirstEnergy, the agency cannot expect the public to lack the same doubts. The NRC has not yet promised that the OI investigations will be completed prior to restarting the troubled plant. The independent verification we are seeking will reassure the public that concerns about wrongdoing are historical rather than ongoing concerns.

4. **Millstone Precedent:** The proposed Director's Decision states that Millstone "was a unique enforcement-related action based upon longstanding, repetitive, and widespread breakdowns in the licensee's performance" and asserts that Davis-Besse is sufficiently different as to warrant a different NRC response.

Perhaps, but what about “longstanding, repetitive, and widespread breakdowns in the licensor’s performance”? The NRC, after all, did not turn in a stellar role at Millstone pre-1996 as documented in US General Accounting Office and NRC Inspector General reports. The NRC, after all, did not turn in a stellar role at Indian Point 2 before its February 2000 accident as documented in another NRC Inspector General report. And now the NRC’s performance is once again suspect in the events leading up to the discovery of significant reactor vessel head damage at Davis-Besse.

Thus, while the licensee may not have the same long track record of performance problems that Millstone demonstrated, the NRC certainly shares that long track record. We felt, and still feel, that an independent team is warranted at Davis-Besse.

Again, it is not paranoia for the public to have doubts about the NRC’s performance and capabilities. Members of our coalition are aware of at least two separate, but related, inquiries underway by the NRC’s Office of the Inspector General (OIG) into possible wrongdoing on the part of the NRC in the Davis-Besse matter. One such inquiry probes the process used by the NRC last year to grant a deferral to FirstEnergy for its CRDM nozzle inspection and the NRC’s decision not to issue the shutdown order it had prepared. Another inquiry probes the veracity of the NRC Chairman’s response to Congressman Markey and Kaptur about Davis-Besse. One of our members (Dave Lochbaum) has already been interviewed by OIG investigators about these inquiries. The independent verification we are seeking will reassure the public that the troubled plant is not restarting with other safety problems that the NRC has winked at.

Mr. Zwolinski, you must recall typing the following message to Lawrence Burkhart on November 16th of last year about the high risk plants, including Davis-Besse:

I said we can justify today to shut these plants down however we are exercising discretion noting it would be punitive to immediately shut a plant down and they sit there for a month waiting to obtain the correction inspection equipment etc.

The public is more than a little concerned about the discretion you and your colleagues have been exercising. When the NRC staff builds a strong safety case, as it did last year, the public expects you to protect us rather than shield the industry. We got short-changed last year and have a vested interest in ensuring that we don’t get short-changed again.

5. **Other Factors:** The NRC has four oft-cited objectives: (a) maintain safety, (b) improve public confidence, (c) improve effectiveness and efficiency, and (d) reduce unnecessary burden. With respect to the Davis-Besse mess, the agency is 0 for 4:
 - (a) **Maintain safety:** A six-inch hole in the reactor vessel head formed over many years of neglect and overlook by the plant owner and the NRC cannot satisfy this objective no matter how one views it.
 - (b) **Improve public confidence:** Public confidence is lowered when a company places production ahead of safety and the regulator fails to notice. The company’s error can be understood, but not excused, because the plant is licensed as a production reactor. They had two things to watch and had the wrong balance. But the NRC’s only focus is on safety. The public cannot understand how the agency failed to monitor one thing. NRC Chairman Richard Meserve noted this single focus during his confirmation hearing before the United States Senate on September 23, 1999:

“First, and most important, it reinforces the need for the NRC to fulfill its obligation to demand safe operations by licensees. The NRC must assure that the pressures to reduce costs do not become incentives to cut corners on safety. I understand that the principal statutory responsibility of the Commission is the protection of the public’s health and safety and of the environment. The NRC must ensure that its licensees meet the agency’s safety and environmental requirements.”

FirstEnergy admitted that it allowed pressure to reduce costs to distract its focus on safety. And the NRC failed to ensure that safety requirements were met. While the Chairman may understand his responsibility, he was unable to translate that knowledge into proper assurance of safety. There’s a very disturbing pattern forming. The Chairman knows that pressures to reduce costs may cause safety corners to be cut, but is unable to prevent it. The NRC staff knows that the CRDM nozzles at Davis-Besse reduce safety margins and compromise safety regulations, but are unable to prevent continued operation of the facility. We are not pleased by the NRC’s failures. Not pleased at all.

- (c) **Improve effectiveness and efficiency:** Had the NRC ordered Davis-Besse to be shutdown last fall for inspections and those inspections subsequently revealed the damaged head, the agency’s actions would have been validated. Instead, the NRC is having to defend itself from many quarters. This reactive posture cannot be as effective or efficient as the pro-active posture would have been. The cliché “a stitch in time saves nine” applies.
- (d) **Reduce unnecessary burden:** Following the Davis-Besse “surprise” earlier this year, the NRC issued two bulletins to date requiring considerable licensee actions in short order. Tied to the reactive posture the NRC was forced into, this rush job undoubtedly cost plant owners (and thus ratepayers and stockholders) more than if the agency had done the right thing last year. The cliché “haste makes waste” applies.

At this time, it’s not clear whose performance at Davis-Besse was worst: FirstEnergy’s or the NRC’s. We felt, and still feel, that an independent team verifying that problems at Davis-Besse are being properly identified and corrected was the absolute best way to restore public confidence regardless of how the worst performer debate turns out.

The coalition still believes that conditions at Davis-Besse warrant an independent team of experts examining the areas we’ve identified. We are profoundly disappointed that the NRC would even entertain denying this reasonable request. Public confidence in the NRC has been eroded far worse than the reactor vessel head at Davis-Besse, yet you propose to accept this condition as-is. That’s unacceptable.

If the NRC compounds its mistake last fall in granting FirstEnergy’s request for a deferral on the necessary CRDM nozzle inspections with a mistake this summer in denying our request for remedial actions, we would implore the NRC to at least take the following steps:

1. Release the documents requested under FOIAs 2002-0229 and 2002-0345.
2. Direct the Lessons-Learned Task Force to conduct one or more public meetings at least thirty (30) days after the FOIA’ed documents are released.
3. Secure a firm commitment from FirstEnergy that its various panels will make reports on their work publicly available and that representatives of the various panels will present findings to the NRC during public meetings.

4. Complete all Office of Investigations and Office of the Inspector General investigations/inquiries into potential wrong-doing regarding Davis-Besse prior to restart of the troubled plant.

The coalition also wishes to note for the record the unfairness with which your agency handles our concerns. Our 2.206 petition sought enforcement action against FirstEnergy. In your August 16th letter transmitting the proposed Director's Decision, you state:

"The staff will then review any comments provided by you and the licensee and consider them in the final version of the Director's Decision with no further opportunity to comment."

So we get one opportunity to appeal your proposed non-imposition of an enforcement action at Davis-Besse. Compare that solitary chance to the multitude of opportunities your agency afforded FirstEnergy last fall as the company resisted the proposed imposition of an enforcement action—the shutdown order. FirstEnergy had meetings and telephone conferences and unscheduled drop-in visits to protest your proposed shutdown order. And they were ultimately successful. We get one shot. And you have the unmitigated gall to allow FirstEnergy an opportunity to pile-on its opposition to our request for enforcement action. You didn't give us a single chance last fall to voice our opposition to their request against your enforcement action. Your process favors production over safety. The NRC is as guilty of that mistake as FirstEnergy. You are co-conspirators in exposing the public to undue risk.

The coalition designates Terry Lodge of the Toledo Coalition for Safe Energy as the primary point of contact for the NRC regarding this petition. David Lochbaum of UCS will be the technical lead for the coalition.

Sincerely,



David Lochbaum

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