

September 19, 2002

Mr. Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th Street NW Suite 404
Washington, DC 20036

Dear Mr. Gunter:

I am responding to your letter of August 5, 2002, concerning your April 16, 2002, request under the Freedom of Information Act (FOIA) for documents relating to the decision-making process for control rod drive mechanism (CRDM) nozzle inspections at the Davis-Besse nuclear plant. In your letter, you also express concern about the impartiality of Dr. Edwin M. Hackett who is serving on the NRC's Davis-Besse Lessons Learned Task Force. You request the NRC:

1. Immediately release FOIA 2002-0229,
2. Direct the Lessons Learned Task Force not to finalize its report prior to the release and public disclosure of FOIA 2002-0229 and following a minimum of 30 days from release date for public review of all documentation so as to receive public input into the report,
3. Replace Dr. Edwin M. Hackett as Chairman of the Lessons Learned Task Force with a chairman not directly involved in the current NRC oversight issues of concern at Davis-Besse,
4. Direct the 0350 Restart Panel to publicly review and deliberate on all germane documents released by FOIA 2002-0229 relating to FENOC statements of material fact and operational commitments made to the Commission to obtain a waiver from safety inspection reporting requirements directed by NRC Bulletin 2001-01, and
5. Ask the Office of the Inspector General to review the nature of the present and past delay by NRC in publicly releasing the agency response to FOIA 2002-0229.

On August 27 and August 29, 2002, the NRC released a large number of records to you pursuant to your request (FOIA No. 2002-0229). As you know, documents to be released under a FOIA request must be reviewed in order to ensure that sensitive information including, for example, trade secret or other privileged commercial information, personal privacy, and investigatory information, is not released to the public. The scope of the request in FOIA No. 2002-0229 required a significant effort to complete the search and review of the large volume of documents.

Your letter stated "Once the FOIA 2002-0229 was provided to Congress, it is our understanding that it should also have been released by the NRC to the requestor...." Requests from members of Congress are not routinely handled under FOIA, but pursuant to the agency's general obligation to keep the Congress informed of its activities. In this regard, the Commission may provide members of Congress access to information and documents that are not routinely made available to the public. That the information may have been provided to a member of Congress does not obviate the NRC's review of the documents in discharging its responsibilities under FOIA. Although the NRC was in the process of assembling records in response to your FOIA request at the time of your letter, the NRC had not yet released any records pursuant to this request because the FOIA review process had not been completed.

In regard to your request for public input into the Lessons Learned Task Force (LLTF) report, the LLTF remains open to any information stakeholders wish to provide in writing. In addition, the LLTF's report will be released to the public. Although the LLTF does not intend to hold a public meeting to solicit further input, the LLTF does intend to conduct a public meeting in Oak Harbor, Ohio, to discuss the results of the review. Upon completion of the LLTF activities, the NRC will remain open to stakeholder comments and information regarding the Davis-Besse issues.

You request the IMC 0350 Restart Panel to publicly review and deliberate on all germane documents released by FOIA 2002-0229 relating to FENOC statements of material fact and operational commitments made to the NRC to obtain a waiver from safety inspection reporting requirements directed by NRC Bulletin 2001-01. The IMC 0350 Oversight Panel is reviewing matters related to the completeness and accuracy of information provided by FENOC regarding the basis for operating the Davis-Besse facility until February 16, 2002, before performing an inspection of the reactor head. The results of those activities will be made publicly available and discussed during public meetings consistent with NRC policies and procedures. The NRC Office of Investigations is investigating the potential for any associated wrongdoing in matters related to completeness and accuracy of information.

You also request that Dr. Edwin M. Hackett to recuse himself as Chairman of the LLTF, and that he be replaced by someone not directly involved in the current NRC oversight issues at Davis-Besse. Dr. Hackett is the Assistant Team Leader and Mr. Art Howell is the Team Leader of the LLTF. As you know, the LLTF was chartered to look broadly at NRC processes, and not just at the timing of the Davis-Besse shutdown, and its members were selected with care. The criteria for selecting members of the LLTF were intended to ensure the formation of a multi-disciplined, experienced team with no members having significant past involvement in the oversight of Davis-Besse. In his position at the NRC as Assistant Chief of the Materials Engineering Branch in the Office of Nuclear Regulatory Research, Dr. Hackett was involved in the agency's general review of the technical aspects of vessel head penetration cracking. The e-mail you discussed in your letter is an instance in which Dr. Hackett was responding to a request by the Office of Nuclear Reactor Regulation regarding the accuracy of the reference to probabilistic fracture mechanics analyses. Dr. Hackett was primarily involved in the assessment of technical information and not the decision-making process related to the

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possible issuance of an Order to shut down the Davis-Besse nuclear power plant. Dr. Hackett is highly qualified to serve on the LLTF because of his materials engineering background and his knowledge of vessel head penetration cracking issues. Accordingly, I believe Dr. Hackett has and will continue to provide impartial expertise to the LLTF activities.

Finally, you request the Office of Inspector General (OIG) review the nature of possible delay by the NRC in publicly releasing records in response to your FOIA request (FOIA 2002-0229). I have provided a copy of your letter to OIG for whatever action they deem appropriate.

Sincerely,

/RA by Carl J. Paperiello Acting For/

William D. Travers
Executive Director for Operations

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*See previous concurrence

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