

October 15, 2002

Mr. Terry Lodge, Convenor and Chair
Toledo Coalition for Safe Energy
316 N. Michigan Street, Suite 520
Toledo, OH 43624-1627

Dear Mr. Lodge:

This letter responds to the petition you filed with Dr. William D. Travers pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on April 24, 2002, as supplemented on May 9, 2002. In your petition, you requested that the U.S. Nuclear Regulatory Commission (NRC) issue an order to FirstEnergy Nuclear Operating Company (the licensee), the owner of the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), requiring a verification by an independent party (VIP) for issues related to the reactor vessel head problem.

The staff acknowledges your efforts in bringing your request to the attention of the NRC and shares your concerns about verifying the adequacy of plant owner performance and reassuring the public that all reasonable safety measures have been taken. As part of its evaluation of the merits of your petition, the NRC staff considered the actions of both the licensee and the NRC. The NRC staff finds that its ongoing actions are sufficient to verify the adequacy of the licensee's performance related to reactor vessel head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart. The combined efforts of the Augmented Inspection Team (AIT) and the Inspection Manual Chapter (IMC) 0350 Oversight Panel will adequately identify and evaluate the technical and programmatic issues at Davis-Besse. The staff has adequate expertise and resources to monitor the licensee's corrective and preventative actions. Therefore, the Petitioners' request for the NRC to issue an Order to the licensee requiring the establishment of a VIP is denied.

Subsequent to April 24, 2002, the licensee took several actions to develop a Return-to-Service Plan, which includes actions to address each of the issues identified in the Petition. Additionally, the licensee has established a Restart Organization, which includes, in part, a Restart Overview Panel to provide overall oversight of implementation of the Return-to-Service Plan, an Engineering Assessment Board to review engineering products and programs, and a Restart Station Review Board to make initial decisions regarding restart required actions. These oversight boards include both licensee and non-licensee personnel.

Subsequent to April 24, 2002, the NRC took several actions. On May 3, 2002, the NRC formed the Davis-Besse IMC 0350 Oversight Panel. Each of your proposed tasks for the requested VIP was carefully evaluated and all appropriate regulatory oversight activities are reflected in the charter of the IMC 0350 Oversight Panel. The inspections conducted under the direction of the IMC 0350 Oversight Panel will assess the adequacy of the licensee's Return-to-Service Plan activities and include independent confirmatory evaluation of the Petitioners' concerns.

On May 15, 2002, the NRC formed the Davis-Besse Reactor Vessel Head Degradation Lessons-Learned Task Force (LLTF) to conduct an independent evaluation of the NRC staff's regulatory processes related to assuring reactor vessel head integrity in order to identify and

recommend improvements. The LLTF charter reflects many of the Petitioners' concerns. The LLTF has held two public meetings and comments were provided to the LLTF by a co-petitioner (D. Lochbaum). The LLTF provided a written report to NRC management on September 30, 2002, documenting its observations, conclusions, and recommendations. The full 96-page report (plus attachments) is publicly available on the NRC's web site at: <http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/news.html>. After NRC management has had a chance to review the report and develop an Action Plan to address the LLTF's recommendations, the NRC Action Plan will be made publicly available.

A copy of the enclosed Director's Decision (DD-02-01) denying your petition will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the Decision within that time. The documents cited in the enclosed Decision are available for inspection at the Commission's Public Document Room and on the NRC's Web site, <http://www.nrc.gov/reading-rm/adams.html> (the Electronic Reading Room), via ADAMS.

I have also enclosed a copy of the notice of "Issuance of the Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication. Please feel free to contact the petition manager, Mr. Bill Macon, to discuss any questions related to this petition. Mr. Macon can be reached at 301-415-3965.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosures: 1. Director's Decision DD-02-01
2. *Federal Register* Notice

cc w/Enclosure 1 only: See next page

Toledo Coalition for Safe Energy

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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 OFFICE OF NUCLEAR REACTOR REGULATION

Samuel J. Collins, Director

In the Matter of)	Docket No. 50-346
)	
FirstEnergy Nuclear Operating Company)	License No. NPF-3
)	
(Davis-Besse Nuclear Power Station, Unit 1))	
)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated April 24, 2002, David Lochbaum, on behalf of multiple organizations, filed a Petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206. The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) issue an Order to FirstEnergy Nuclear Operating Company (the licensee), the owner of the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), requiring a Verification by an Independent Party (VIP) for issues related to the reactor pressure vessel (RPV) head degradation problem. The Petitioners supported their request by citing the Order issued by the NRC on August 14, 1996, to Northeast Nuclear Energy Company, the owner of the Millstone Nuclear Power Station, as a recent and relevant precedent.

The Petitioners met by teleconference with the Office of Nuclear Reactor Regulation (NRR) Petition Review Board on May 9, 2002, to clarify the bases for the Petition. The Petition and the transcript of this meeting, which was treated as a supplement to the Petition, are available in ADAMS under Accession Nos. ML021260444 and ML021490065, respectively, for inspection at the Commission's Public Document Room (PDR), located at One White Flint

North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the ADAMS Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

The licensee responded to the Petition on May 16, 2002, and the information provided was considered by the staff in its evaluation of the Petition. A copy of the licensee's response is publicly available in ADAMS under Accession No. ML021410451.

In a letter dated June 4, 2002, the NRC informed the Petitioners that the issues in the Petition were accepted for review under 10 CFR 2.206 and had been referred to NRR for appropriate action. A copy of the acknowledgment letter is publicly available in ADAMS under Accession No. ML021370030.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on August 16, 2002. The Petitioners responded with comments on August 29, 2002, and the licensee responded on August 30, 2002. Copies of these documents are publicly available under ADAMS Accession Nos. ML022260169, ML022260210, ML022530407, and ML022530399, respectively. The comments and the NRC staff's responses to them are attached to this Director's Decision.

II. Discussion

As a result of the licensee's identification of extensive degradation of the pressure boundary material of the RPV head on March 6, 2002, the NRC dispatched an Augmented Inspection Team (AIT) to Davis-Besse on March 12, 2002, and issued a Confirmatory Action Letter (CAL) to the licensee on March 13, 2002, related to commitments for activities to evaluate and resolve the RPV head degradation issue. At the time of the Petitioner's request for enforcement-related action on April 24, 2002, the NRC was still assessing the issue and

developing a comprehensive plan for reviewing the broader aspects of the licensee's performance.

In their request for a VIP, the Petitioners stated that "independent programs serve both to verify the adequacy of plant owner performance and to reassure the public that all reasonable safety measures have been taken." The Petitioners further stated that conditions at Davis-Besse warranted such verification and reassurance.

Pursuant to 10 CFR 2.206, the Petitioners requested an enforcement-related action, that the NRC issue an Order to the licensee requiring a VIP for issues related to the RPV head degradation and that the VIP be tasked with the following:

1. Verifying the adequacy of the problem identification and resolution process.
2. Verifying the root cause evaluation prepared by the licensee for the damage to the RPV head.
3. Verifying that the long-term accumulation of boric acid within the reactor containment did not impair the function of safety-related systems, structures, and components.
4. Verifying that the licensee has taken appropriate actions in response to NRC generic communications.
5. Verifying that the licensee has not deferred other plant modifications without appropriate justification.
6. Verifying that all entities responsible for safety reviews (e.g., Quality Assurance, INPO, the nuclear insurer, the plant operating review committee, the offsite safety review committee, etc.) are properly in the loop and functioning adequately.
7. Documenting its work in a publicly available report.
8. Presenting its conclusions to the NRC in a public meeting conducted near the plant site.

Subsequent to April 24, 2002, the NRC took several actions. On May 3, 2002, the NRC formed the Davis-Besse Inspection Manual Chapter (IMC) 0350 Oversight Panel to provide the required oversight throughout the plant's shutdown and restart and issued its Charter and Process Plan. On May 15, 2002, the NRC formed the Davis-Besse Reactor Vessel Head

Degradation Lessons-Learned Task Force (LLTF) to conduct an independent evaluation of the NRC staff's regulatory processes and issued its charter. Also on May 15, 2002, the NRC issued a revised CAL to the licensee to address the option of replacing the existing RPV head, which the licensee has decided to pursue in lieu of repairing the damaged head. On July 3 and July 25, 2002, the NRC revised the charter for the IMC 0350 Oversight Panel to reflect changes in its membership. On August 16, 2002, the IMC 0350 Oversight Panel issued a Restart Checklist, which is a list of issues that require resolution before restart can be considered. These actions represent a significant and comprehensive NRC response to the RPV head degradation issue, a response that was not yet implemented at the time of the April 24, 2002, Petition.

Subsequent to April 24, 2002, the licensee took several actions to develop a Return-to-Service Plan, which were initially described in their May 16, 2002, letter responding to the Petition. On May 21, 2002, the licensee submitted to the NRC a Return-to-Service Plan describing their planned course of action for Davis-Besse's safe and reliable return to service. This plan is not a commitment, but is subject to NRC evaluation for adequacy and provides input to the NRC's Restart Checklist. Revisions to the Return-to-Service Plan were submitted on July 12, August 21, and September 23, 2002. Copies of the plan and its revisions are publicly available in ADAMS under Accession Nos. ML021430429, ML022030464, ML022670616, and ML022740488 respectively. The Return-to-Service Plan includes actions to address the issues identified in the Petition.

The licensee has established a Restart Organization, which includes not only reorganized and realigned internal senior leadership, but also four separate and distinct oversight review and verification teams, three of which include independent industry experts. These three teams are the Restart Overview Panel which consists of licensee and non-licensee executives and the local Ottawa County Administrator and provides overall oversight of

implementation of the Return-to-Service Plan and its components; the Engineering Assessment Board which consists of independent industry experts and members of the licensee's engineering organization charged with reviewing engineering products and programs; and the Restart Station Review Board which consists of site managers and independent overseers and makes initial decisions regarding restart required actions. The evaluations and corrective actions of the licensee's Restart Organization are discussed in routine public meetings and are also being evaluated by the NRC's Oversight Panel pursuant to IMC 0350.

It should be noted that the NRC staff shares the Petitioners' concerns about verifying the adequacy of plant owner performance and reassuring the public that all reasonable safety measures have been taken. Each of the Petitioners' proposed tasks for the requested VIP was carefully evaluated and all appropriate regulatory oversight activities are reflected in the charter of the IMC 0350 Oversight Panel. Additionally, the LLTF charter reflects many of the Petitioners' concerns. Both groups have held meetings to discuss their charters and receive input from the public to ensure that concerns such as those identified by the Petitioners are being considered. The staff has concluded that the Petitioners' concerns are valid and are within the scope of the actions being implemented by the NRC.

IMC 0350 provides regulatory guidelines to be followed when a power reactor licensee plans to restart the reactor after the plant has been shut down as a result of significant performance problems or events. The applicability of IMC 0350 is sufficiently broad to address the Petitioners' concerns. The overall objective of the IMC 0350 Oversight Panel is to provide the required oversight throughout the shutdown and restart to ensure that appropriate regulatory and licensee actions are implemented and the technical issues resolved before the plant is allowed to restart and operate. The IMC 0350 Oversight Panel continues to hold public meetings periodically with the licensee's representatives to review the status of activities associated with RPV head degradation issues. These meetings are normally held in the vicinity

of the Davis-Besse plant and the results documented in publicly available transcripts and reports. The inspections conducted under the direction of the IMC 0350 Oversight Panel will assess the adequacy of the licensee's Return-to-Service Plan activities and include independent confirmatory evaluation of the Petitioners' concerns.

In addition to regulatory oversight activities, the NRC created the LLTF to conduct an independent evaluation of the NRC staff's regulatory processes related to assuring RPV head integrity in order to identify and recommend improvements. The LLTF consists of NRC managers and staff who are not routinely involved with Davis-Besse. The scope of subjects considered by the LLTF includes Reactor Oversight Process Issues, Regulatory Process Issues, Research Activities, International Practices, and Generic Issue Processes. The LLTF periodically briefed NRC senior managers and provided a written report on September 30, 2002, documenting its observations, conclusions, and recommendations. A copy of this report is publicly available in ADAMS under Accession No. ML022760414. The full 96-page report (plus attachments) is also publicly available on the NRC's web site at:

<http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/news.html>.

After NRC management has had a chance to review the report and develop an Action Plan to address the LLTF's recommendations, the NRC Action Plan will be made publicly available.

In support of their request for enforcement-related action, the Petitioners cite as a recent and relevant precedent the August 14, 1996, Confirmatory Order issued to Northeast Nuclear Energy Company establishing an Independent Corrective Action Verification Program at Millstone Nuclear Power Station, Units 1, 2, and 3 (Millstone). This was a unique enforcement-related action. Millstone had longstanding, repetitive, and widespread performance problems for which the NRC staff did not have sufficient expertise or resources to evaluate. Additionally, the Order was issued only after extensive investigations which identified multiple problems at Millstone related to lack of a safety-conscious working environment, lack of

confidence in the level of technical work performed by the licensee and its contractors, and a chilling environment for employees to raise safety issues. While the licensee did not detect the RPV head degradation problems in a timely manner, the NRC has not identified performance problems at Davis-Besse that are beyond the NRC staff's technical and programmatic expertise to evaluate. Therefore, the NRC staff does not believe that the requested VIP at Davis-Besse is necessary. The IMC 0350 Oversight Panel has adequate access to agency resources to complete its efforts and the LLTF has already completed its efforts. If ongoing activities identify new and/or different issues that warrant consideration of an enforcement-related action similar to that used at Millstone, a change to the current staff regulatory approach would be considered.

Contrary to the implied assertion by the Petitioners that the NRC staff is not competent to oversee and conduct a thorough review, the staff is confident that the ongoing regulatory actions will provide information that will adequately resolve the RPV head degradation safety issues and associated safety concerns at Davis-Besse. The licensee's own actions to provide for independent verification by industry experts will provide supplementary assurance that their actions are adequate. Although the individual RPV head degradation issues and concerns have not yet been resolved, the issues raised by the Petitioners regarding the regulatory processes for reviewing the broader aspects of the licensee's performance have been the subject of NRC staff review and evaluation. The staff continues to believe that the establishment of the AIT and the IMC 0350 Oversight Panel, as well as the comprehensive technical reviews being performed by the staff and investigations being performed by the NRC's Office of Investigations, are responsive to the degradation problem, and will ensure the protection of the public health and safety and the environment. The Petitioners' request for the NRC to issue an Order to the licensee requiring the establishment of an additional independent program would create another layer of oversight, representing unnecessary regulatory burden

without an increase in the protection of the public health and safety and the environment.

III. Conclusion

The NRC staff finds that its ongoing actions are sufficient to verify the adequacy of the licensee's performance related to RPV head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart. The combined efforts of the AIT and the IMC 0350 Oversight Panel will adequately identify and evaluate the technical and programmatic issues at Davis-Besse. The staff has adequate expertise and resources to monitor the licensee's corrective and preventative actions. Thus, the enforcement-related action requested by the Petitioners for a VIP is not warranted. Additionally, the licensee is already taking action to provide an adequate level of independent verification for restart activities. Therefore, the Petitioners' request for the NRC to issue an Order to the licensee requiring the establishment of a VIP is denied. If further assessment by the IMC 0350 Oversight Panel identifies new and/or different issues that warrant consideration of an enforcement-related action similar to Millstone, a change to the current staff regulatory approach will be considered.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 15th day of October 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Staff Responses to Comments on
Proposed Director's Decision DD-02-01

STAFF RESPONSES TO COMMENTS ON
PROPOSED DIRECTOR'S DECISION DD-02-01

This attachment documents the Nuclear Regulatory Commission (NRC) staff response to comments received on proposed Director's Decision (DD) DD-02-01. The comments were solicited by letter dated August 16, 2002.

The Petitioners replied by letter dated August 29, 2002. The Petitioner's comments and the staff responses are summarized below.

1. Petitioners Comment

The four measures cited as primary reasons for denying the petition fail, either individually or collectively, to provide equivalent assurances to the actions requested in the Petition.

Staff Response

Each of the Petitioners' proposed tasks for the requested VIP was carefully evaluated and all appropriate regulatory oversight activities are reflected in the charter of the IMC 0350 Oversight Panel. Additionally, the Lessons-Learned Task Force (LLTF) charter reflects many of the Petitioners' concerns. The primary request for enforcement-related action to require an additional VIP was properly considered and denied for the reasons cited in the DD.

2. Petitioners Comment

The 0350 Panel is complimented for providing meaningful public participation and dialogue. However, the most challenging problems are the non-technical ones. The NRC was unable to cause a necessary shutdown of Davis-Besse in December 2001, notwithstanding overwhelming technical argument. How can there be confidence that the NRC can deal with the more challenging nontechnical problems without an independent team overseeing both the licensee and the NRC?

Staff Response

In accordance with the NRC's Management Directive 8.11 "Review Process for 10 CFR 2.206 Petitions," bare assertions of NRC incompetence or wrongdoing are not criteria for review under 10 CFR 2.206. A copy of the Petitioner's comments was forwarded to the NRC's Office of the Inspector General for whatever action is deemed appropriate by that office.

The nontechnical issues emphasized by the Petitioners are being addressed by the 0350 Oversight Panel, the LLTF, and the licensee's Restart Organization. The 0350 Oversight Panel has the ability and enough agency resources to adequately evaluate both the technical and nontechnical problems. The Petitioners, however, do not provide a persuasive argument for how their proposed VIP consisting of a material corrosion expert, an I&C/electrical engineer, a mechanical engineer and a system engineer would address the various nontechnical issues and satisfy their concerns.

3. Petitioner's Comment:

The LLTF is a sham. The Petitioners give it zero credit toward meeting the objectives of the petition, claiming that there is no public involvement and that the group is neither independent nor unbiased.

Staff Response: This issue was addressed separately in a letter to Mr. Lochbaum dated September 10, 2002, in response to his letter of August 5, 2002, concerning the assignment of Dr. Hackett as the Assistant Team Leader of the LLTF and other LLTF-related concerns. A copy of the NRC response is publicly available in ADAMS under Accession No. ML022550222.

4. Petitioner's Comment:

The FENOC panels are conducting secret independent verification and there is no indication that any of the findings will be made available to the NRC or the public. Further, FENOC's credibility is so damaged by prior misrepresentations that it is unreasonable to place any confidence in their findings without a VIP. The veracity of company reporting is seriously eroded by FENOC misrepresentations of material fact regard actual plant conditions.

Staff Response:

The evaluations and corrective actions of the licensee are being discussed in routine public meetings and are also being evaluated by the NRC's Oversight Panel pursuant to IMC 0350. All of these meetings, transcripts, and NRC inspection reports are being made publicly available. The licensee's teams include independent industry experts, non-licensee executives and the local Ottawa County Administrator to provide overall oversight. Additionally, investigations by the NRC's Office of Investigations of possible wrongdoing on the part of FirstEnergy are ongoing.

5. Petitioner's Comment:

Davis-Besse's performance may be sufficiently different as to warrant a different NRC response than that taken for Millstone's longstanding, repetitive, and widespread breakdowns. But what about the NRC's performance with respect to Millstone in 1996, to Indian Point 2 in 2000, and Davis-Besse in 2001? Based on NRC performance problems, an independent team is warranted.

Staff Response:

In accordance with Management Directive 8.11, bare assertions of NRC incompetence or wrongdoing are not criteria for review under 10 CFR 2.206. The NRC is, in fact, subject to independent review and oversight by the U.S. General Accounting Office (GAO) and the NRC's Office of the Inspector General, as recognized by the Petitioners. These entities provide adequate oversight of NRC activities. In addition, the Advisory Committee on Reactor Safeguards provides independent review and oversight of safety-related and technical issues and, on its own initiative, may conduct reviews of specific safety-related items. As previously mentioned, a copy of the Petitioner's comments was

forwarded to the NRC's Inspector General for whatever action is deemed appropriate by that office. Additionally, the GAO has undertaken an investigation of the NRC's oversight of Davis-Besse as a result of a congressional inquiry by Rep. Dennis Kucinich (D-Ohio).

6. Petitioners Comment

The NRC has failed to meet its own oft-cited objectives: (a) maintain safety, (b) improve public confidence, (c) improve effectiveness and efficiency, and (d) reduce unnecessary burden.

Staff Response

As stated in the DD, the NRC created the LLTF to conduct an independent evaluation of the NRC staffs regulatory processes in order to identify and recommend improvements.

Although the margin of safety was unacceptably reduced, an accident or operating event did not occur. If a loss-of-coolant accident had occurred as a result of the failure of the reactor head to maintain the pressure boundary, it would have been bounded by accident analyses required to ensure adequate protection of public health and safety and the environment. While no one wants or expects a worst-case design basis accident to occur, U.S. plants are designed and licensed to operate with multiple and redundant safety systems to mitigate nuclear reactor accidents.

7. Petitioners Comment

The NRC has the unmitigated gall to provide FirstEnergy multiple opportunities to protest proposed enforcement actions but provides only a single chance for petitioners to protest the proposed DD. The NRC process favors production over safety and exposes the public to undue risk.

Staff Response

The Petitioners recognize that NRC processes are being followed but do not acknowledge the differences between the 10 CFR 2.206 process and the enforcement process. Assertions of deficiencies within existing NRC rules are not criteria for review under 10 CFR 2.206. Pursuant to 10 CFR 2.206, the Petitioners had the opportunity to submit their request for enforcement-related action. They clarified the bases for their request during a teleconference with the PRB. They had their request accepted for staff review and evaluation. They were given an opportunity to provide comments on the proposed DD. The enforcement process, however, is an iterative process between regulators and licensees to clarify possible violations and determine appropriate penalties. While inspection reports are made publicly available and enforcement conferences are open to the public, the enforcement process does not provide for periods of public involvement and debate.

The licensee replied by letter dated August 30, 2002. The licensee's comments and the staff responses are summarized below.

1. Licensee's Comment

FENOC recommends revising the discussion about licensee actions to reflect the content of the Davis-Besse Return-to-Service Plan, Revision 2, dated August 6, 2002.

Staff Response

Revision 2 and 3 of the Return-to-Service Plan are referenced in the final DD.

2. Licensee's Comment

FENOC agrees with the staff's overall rationale for denying the Petition. It endorses and accepts the conclusion that the Petitioner's request for another independent oversight program in addition to those already created would again be considered if the 0350 Panel identifies a potential need for one.

Staff Response

As stated in the DD, if further assessment by the IMC 0350 Oversight Panel identifies new and/or different issues that warrant consideration of an enforcement-related action similar to that used at Millstone, a change to the current staff regulatory approach will be considered.

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-346

LICENSE NO. NPF-3

FIRSTENERGY NUCLEAR OPERATING COMPANY

DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated April 24, 2002, filed by David Lochbaum on behalf of multiple organizations, hereinafter referred to as the "Petitioners." The Petition was supplemented on May 9, 2002. The Petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1, operated by FirstEnergy Nuclear Operating Company.

The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) issue an Order to FirstEnergy Nuclear Operating Company (the licensee), requiring a verification by an independent party (VIP) for issues related to the reactor pressure vessel (RPV) head problem at Davis-Besse, Unit 1, and that the VIP be tasked with the following:

1. Verifying the adequacy of the problem identification and resolution (PIR) process.
2. Verifying the root cause evaluation prepared by the licensee for the damage to the RPV head.
3. Verifying that the long-term accumulation of boric acid within the reactor containment did not impair the function of safety-related systems, structures, and components (SSCs).
4. Verifying that the licensee has taken appropriate actions in response to NRC generic communications.

5. Verifying that the licensee has not deferred other plant modifications without appropriate justification.
6. Verifying that all entities responsible for safety reviews (e.g., Quality Assurance, INPO, the nuclear insurer, the plant operating review committee, the offsite safety review committee, etc.) are properly in the loop and functioning adequately.
7. Documenting its work in a publicly available report.
8. Presenting its conclusions to the NRC in a public meeting conducted near the plant site.

In support of their request, the Petitioners cite the Order issued by the NRC on August 14, 1996, to Northeast Nuclear Energy Company, the owner of the Millstone Nuclear Power Station in Connecticut, as a recent and relevant precedent for the action they requested. The Petitioners consider that restarting the Davis-Besse plant before an independent team of experts has examined the safety issues related to the RPV head problem would be potentially unsafe and in violation of Federal regulations.

The Petition of April 24, 2002, raises concerns originating in the licensee's identification of extensive degradation to the pressure boundary material of the RPV head on March 6, 2002. The VIP requested by the Petitioners would provide an independent program to verify the adequacy of plant owner performance and to reassure the public that all reasonable safety measures have been taken prior to plant restart.

On May 9, 2002, the Petitioners and the licensee met with the staff's Petition Review Board. The meeting gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on August 16, 2002. The Petitioners responded with comments on August 29, 2002, and the licensee responded on August 30, 2002. The comments and the

NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has denied the request to issue an Order. The reasons for this decision are explained in Director's Decision DD-02-01 pursuant to 10 CFR 2.206, the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville, Maryland, and on the NRC's Web site <http://www.nrc.gov/reading-rm/adams.html> (the Electronic Reading Room), via the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML022620366.

The NRC staff finds that its ongoing actions are sufficient to verify the adequacy of the licensee's performance related to RPV head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart. The establishment of the Augmented Inspection Team and the Inspection Manual Chapter (IMC) 0350 Oversight Panel, as well as the comprehensive technical reviews being performed by the staff and investigations being performed by the NRC's Office of Investigations, are responsive to the degradation problem at Davis-Besse. The staff has adequate expertise and resources to monitor the licensee's corrective and preventative actions. Thus, the enforcement-related action requested by the Petitioners for a VIP is not warranted. Additionally, the licensee is already taking action to provide an adequate level of independent verification for restart activities. Therefore, the Petitioners' request that the NRC issue an Order to the licensee requiring the establishment of a VIP is denied. If further assessment by the IMC 0350 Oversight Panel identifies new and/or different issues that would warrant consideration of an enforcement-related action similar to that used at Millstone, a change to the current staff regulatory approach would be considered.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations.

As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 15th day of October 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

T. Lodge

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recommend improvements. The LLTF charter reflects many of the Petitioners' concerns. The LLTF has held two public meetings and comments were provided to the LLTF by a co-petitioner (D. Lochbaum). The LLTF provided a written report to NRC management on September 30, 2002, documenting its observations, conclusions, and recommendations. The full 96-page report (plus attachments) is publicly available on the NRC's web site at: <http://www.nrc.gov/reactors/operating/ops-experience/vessel-head-degradation/news.html>. After NRC management has had a chance to review the report and develop an Action Plan to address the LLTF's recommendations, the NRC Action Plan will be made publicly available.

A copy of the enclosed Director's Decision (DD-02-01) denying your petition will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the Decision within that time. The documents cited in the enclosed Decision are available for inspection at the Commission's Public Document Room and on the NRC's Web site, <http://www.nrc.gov/reading-rm/adams.html> (the Electronic Reading Room), via ADAMS.

I have also enclosed a copy of the notice of "Issuance of the Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication. Please feel free to contact the petition manager, Mr. Bill Macon, to discuss any questions related to this petition. Mr. Macon can be reached at 301-415-3965.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosures: 1. Director's Decision DD-02-01
2. *Federal Register* Notice

cc w/Enclosure 1 only: See next page

Docket No. 50-346

ACCESSION NOS.:

Incoming: ML021260444 Director's Decision: ML022620366 Package: ML022620518

*See previous concurrence **Concurred by e-mail

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NAME	PKleene*	GCaputo**	TMarsh*	JZwolinski*	BSheron*	SCollins
DATE	09/25/02	09/30/02	10/06/02	10/10/02	10/09/02	10/15/02

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Dated: October 15, 2002

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