

June 6, 2003

Mr. Lew W. Myers  
Chief Operating Officer  
FirstEnergy Nuclear Operating Company  
Davis-Besse Nuclear Power Station  
5501 North State Route 2  
Oak Harbor, OH 43449-9760

Dear Mr. Myers:

By letter dated February 3, 2003, and supplemented by letter dated March 27, 2003, Congressman Dennis Kucinich, Representative for the 10<sup>th</sup> Congressional District of the State of Ohio in the United States House of Representatives, filed a Petition pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* with respect to Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse). The petition and its supplement have been reviewed by the Nuclear Regulatory Commission (NRC) staff, and the staff's proposed Director's Decision on the petition is enclosed.

The petition requested that the NRC immediately revoke the FirstEnergy Nuclear Operating Company's (FENOC's or the licensee's) license to operate the Davis-Besse facility. As the basis for this request, the Petitioner stated that FENOC "has operated outside the parameters of their operating license for several years, has violated numerous federal laws, rules and regulations, and has hidden information from the NRC and lied to the NRC to justify the continuing operation of the Davis-Besse Nuclear Power Station." In the March 27, 2003, supplement, the Petitioner argued that investigations being conducted by the NRC's Office of Investigations to determine whether FENOC willfully violated NRC requirements and whether FENOC deliberately misled the NRC must be completed before the NRC makes any decisions regarding the merits of the petition.

The NRC staff has carefully evaluated the request to delay consideration of this petition pending completion of the NRC's wrongdoing investigations and has determined that such a delay is not warranted. As discussed in this proposed Director's Decision, the Davis-Besse plant is currently shut down, and will remain so, until the NRC is fully satisfied that there is reasonable assurance of adequate protection of the public health and safety and that all issues associated with management of the facility have been satisfactorily addressed. The NRC issued a Confirmatory Action Letter to FENOC confirming the licensee's agreement that NRC approval is required for restart of the Davis-Besse plant. The Confirmatory Action Letter also documented a number of actions that the licensee must implement before the NRC will consider a restart. The NRC is also providing enhanced oversight of FENOC's corrective actions at Davis-Besse as described in NRC Inspection Manual Chapter 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems." That enhanced monitoring will continue during the plant shutdown, any future restart and, if a restart is permitted, following restart until a determination is made that the plant is ready for return to the NRC's normal Reactor Oversight Process.

Additionally, FENOC has initiated, and is still implementing, extensive corrective actions to address hardware, programmatic, and human performance issues in order to demonstrate or achieve compliance with NRC requirements. Thus far, in its oversight of the licensee's corrective actions for the apparent violations, the NRC has not observed an inability or unwillingness on the part of FENCO to achieve compliance with NRC requirements.

Furthermore, the NRC's enforcement considerations are still on going, as are its investigations into alleged willfulness of the apparent technical violations and possible willful withholding of information. These matters will be appropriately handled consistent with NRC policies for enforcement and interface with the U.S. Department of Justice. The merits of the petition do not rest on the potential outcomes of the investigations being conducted by the NRC's Office of Investigations. The corrective actions taken by the licensee and the NRC's oversight of those corrective actions, as well as the NRC's continuing enforcement considerations, allow the NRC to consider this petition's merits while the NRC's Office of Investigations wrongdoing investigations are still ongoing.

I request that you provide comments to me on any portions of the proposed decision that you believe involve errors or any issues in the petition that you believe have not been fully addressed. The staff is making a similar request of the Petitioner. 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. As specified in 10 CFR 2.206, within twenty -five days after the date of the final version of the Director's Decision being published, the Commission may on its own motion review that decision. If the Commission does not act on the Director's Decision within that twenty-five days (unless the Commission extends the review time), the Director's Decision becomes the final agency action on the petition.

Please provide your comments by July 7, 2003. Consistent with the guidance in NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," if no comments are received, the proposed Director's Decision will be issued as the final Director's Decision shortly after the comment period ends.

Sincerely,

***/RA by LMarsh for/***

John A. Zwolinski, Director  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosure: Proposed Director's Decision

cc w/encl: See next page

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Enclosure: ML031390112

Incoming: ML030370067

Response Ltrs: ML031390107 & ML031390067 \* by e-mail \*\*per telecon ◇Transmittal letter changes

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Davis-Besse Nuclear Power Station, Unit 1

cc:

Mary E. O'Reilly  
FirstEnergy Corporation  
76 South Main St.  
Akron, OH 44308

Manager - Regulatory Affairs  
FirstEnergy Nuclear Operating Company  
Davis-Besse Nuclear Power Station  
5501 North State - Route 2  
Oak Harbor, OH 43449-9760

Director, Ohio Department of Commerce  
Division of Industrial Compliance  
Bureau of Operations & Maintenance  
6606 Tussing Road  
P.O. Box 4009  
Reynoldsburg, OH 43068-9009

Regional Administrator  
U.S. Nuclear Regulatory Commission  
801 Warrenville Road  
Lisle, IL 60523-4351

Michael A. Schoppman  
Framatome ANP  
1911 N. Ft. Myer Drive  
Rosslyn, VA 22209

Resident Inspector  
U.S. Nuclear Regulatory Commission  
5503 North State Route 2  
Oak Harbor, OH 43449-9760

Randel J. Fast, Plant Manager  
FirstEnergy Nuclear Operating Company  
Davis-Besse Nuclear Power Station  
5501 North State - Route 2  
Oak Harbor, OH 43449-9760

Dennis Clum  
Radiological Assistance Section Supervisor  
Bureau of Radiation Protection  
Ohio Department of Health  
P.O. Box 118  
Columbus, OH 43266-0118

Carol O'Claire, Chief, Radiological Branch  
Ohio Emergency Management Agency  
2855 West Dublin Granville Road  
Columbus, OH 43235-2206

Zack A. Clayton  
DERR  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, OH 43266-0149

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

Attorney General  
Department of Attorney General  
30 East Broad Street  
Columbus, OH 43216

President, Board of County  
Commissioners of Ottawa County  
Port Clinton, OH 43252

President, Board of County  
Commissioners of Lucas County  
One Government Center, Suite 800  
Toledo, OH 43604-6506

David Lochbaum, Nuclear Safety Engineer  
Union of Concerned Scientists  
1707 H Street NW, Suite 600  
Washington, DC 20006

The Honorable Dennis J. Kucinich  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Dennis J. Kucinich, Member  
United States House of Representatives  
14400 Detroit Avenue  
Lakewood, OH 44107