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FINAL REPLY:

Paul M. Blanch
West Hartford, Connecticut

TO:

Chairman Diaz

FOR SIGNATURE OF :

** PRI **

CRC NO: 03-0382

Chairman Diaz

DESC:

NRC's Voting Process

ROUTING:

Travers
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Dyer, RIII
Bell, OIG
Cyr, OGC

DATE: 06/18/03

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CONTACT:

NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

OFFICE OF THE SECRETARY
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ACTION OFFICE: EDO

AUTHOR: Paul Blanch
AFFILIATION: CT
ADDRESSEE: Nils Diaz
SUBJECT: NRC's voting process

ACTION: Signature of Chairman
DISTRIBUTION: RF, SECY to Ack

LETTER DATE: 06/12/2003
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SPECIAL HANDLING:

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DATE DUE: 06/30/2003 **DATE SIGNED:**

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From: "Paul Blanch" <pdblanch@attbi.com>
To: "Chairman Diaz" <LSH1@nrc.gov>
Date: 6/12/03 11:59AM
Subject: The NRC's voting process

Chairman Diaz:

A copy of the enclosed will be sent by regular mail.

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CC: <SML@nrc.gov>, "George Mulley" <gam@nrc.gov>

CHAIRMAN REC'D
03 JUN 12 PM 12:55

Paul M. Blanch
Energy Consultant

June 12, 2003

Chairman Nils Diaz
USNRC
Washington DC 20555-0001

Dear Chairman:

I have reviewed your letter dated May 30, 2003 to Congressman Greenwood responding to his letter to you dated May 7, 2003.

In your letter you state the following:

Response 2:

The first point Mr. Long raised in his memorandum was his interpretation of the "vote" or "show of hands" that occurred in the November 28, 2001, staff meeting held in our Office of Nuclear Reactor Regulation (NRR).

Contrary to Mr. Long's memorandum, this was not a "vote," but rather a solicitation of technical opinions from the various staff members in order to determine the extent of consensus on this question.

Contrary to Mr. Long's memorandum, there was no "voting" process used during the November 28, 2001, staff meeting.

Question 4:

Please describe the voting process utilized by NRC staff and how this voting process was consistent with administrative procedures or guidelines with respect to the decisions on the proposed shutdown order for Davis-Besse and the December 4, 2001, acceptance of FirstEnergy's bulletin response.

Response 4:

As explained in Response 2, there was no "vote" taken at the November 28, 2001, staff meeting. Rather, the staff was asked to indicate its opinion regarding the issuance of an order to determine if a staff consensus existed.

The staff does not use a "voting process" for making decisions. Instead, the process is one in which the technical staff tries to reach consensus which usually results in a single staff recommendation being made to NRC management

I have reviewed the documentation from the Lessons Learned Task Force. Eight NRC staff members and an OIG representative documented the following:

After the RPV head videos were shown to the NRC, a vote was taken: 3 for shutdown; remaining (10-13) voted to allow continued operation.

Your own Inspector General stated the following. (CASE NO. 02-03S)

NRR staff present at the November 28, 2001, staff meeting told OIG they participated in two separate votes concerning Davis-Besse's request for continued operation. First, the NRR associate director who convened the meeting asked staff to consider whether to accept FENOC's proposal to continue operating until February 16, 2002, at which time it would initiate 13RFO and conduct qualified visual inspections pursuant to NRC Bulletin 2001-01. During this initial vote, the staff voted to either accept FENOC's offer or go forward with the shutdown order. Staff did not reach a unanimous decision during this vote; three staff members voted to proceed with the shutdown order. Subsequently, the NRR associate director called for a second vote. This vote focused solely on whether NRR staff thought that Davis-Besse would experience a CRDM nozzle ejection or other safety significant event if allowed to continue operating until February 16, 2002. On this matter, NRR staff reached unanimous agreement that a CRDM nozzle ejection before February 16, 2002, was unlikely and that there was no significant safety concern that would preclude continued operation until that date.

On November 29, the results of the November 28, 2001, staff meeting were provided to the NRR Director. OIG learned that following receipt of this information, the NRR Director met with the three staff members who initially voted against continued operation to learn whether they were comfortable with the outcome of the second vote. OIG was told by the three staff members and by the NRR Director that the staff members told the NRR Director that they did not feel strongly enough about their concern to file a Differing Professional View (DPV) or Differing Professional Opinion (DPO).³ Following these discussions, the NRR Director concluded that there was sufficient information available to justify operation of the Davis-Besse facility for 6 weeks past the deadline established in Bulletin 2001-01. He subsequently informed the Commission that the staff and licensee had reached a mutually acceptable resolution of the matter. The draft order requiring Davis-Besse to cease operations was never issued.

On January 8, 2003, Chairman Meserve responded to the OIG report and disputed many of the findings however the "voting" process was not an issue at this time.

We have the Office of the Inspector General discussing the voting process, eight NRC staff members and an OIG representative during a meeting in August 2002 agreeing and documenting the voting process.

With all of this NRC documentation of the voting process allowing Davis Besse to continue to operate how can you justify to a US Congressman and the Chairman of the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce that the "staff does not use a "voting process" for making decisions?"

Could you please explain this apparent inconsistency?



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**c. The Honorable James C. Greenwood, Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515**

**Mr. George Mulley
Office of the Inspector General**

**Mr. Steve Long
USNRC**