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Docket Number 50-346
License Number NPF-3
Serial Number 2970

July 7, 2003

Mr. Ledyard B. Marsh, Director (Acting)
Division of Licensing Project Management
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Comments on Proposed Director's Decision Under 10 CFR 2.206 Denying Petition and Supplemental Petition Filed by Congressman Kucinich

Dear Mr. Marsh:

On June 6, 2003, the Nuclear Regulatory Commission (NRC) Office of Nuclear Reactor Regulation (NRR) issued its proposed Director's Decision Under 10 CFR § 2.206 ("Proposed Decision"), denying the February 3, 2003 petition and the March 27, 2003 supplemental petition filed by Congressman Dennis J. Kucinich (collectively, the "Petition"). In your transmittal letter, you requested that FirstEnergy Nuclear Operating Company (FENOC or the Company) provide comments on "any portions of the proposed decision that [FENOC] believe[s] involves errors or any issues in the petition that [FENOC] believes have not been fully addressed."

Pursuant to your request, FENOC reviewed the proposed Decision and did not note any such errors or issues. In short, FENOC agrees with the Staff's findings and conclusions, as stated. The Petition presents no new facts or issues, and all cited issues are already known to the NRC and have been, or are being, considered in one or more of its inspections, investigations, or technical reviews. And as to those facts and issues, they are not grounds for the relief requested in the Petition.

On a related matter, FENOC strongly disagrees with the allegations made in Ms. Billie Garde's June 7, 2003 letter to Dr. William Travers, NRC Executive Director of Operations (EDO), re: Response to Davis Besse 2.206 Petition. Ms. Billie Garde is counsel for Mr. Andrew Siemaszko, a former FENOC employee, who was terminated for failure to satisfy the Company's standards and expectations, and who subsequently filed a complaint under Section 211 of the Energy Reorganization Act. Except for an issue regarding the NRC's 0350 Panel, which Ms. Garde requests to be referred to the NRC Office of Inspector General (OIG), the June 7, 2003 letter

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presents no new facts or issues, and all other issues cited are already known to the NRC and have been, or are being, considered in one or more of its inspections, investigations, or technical reviews.

As to Ms. Garde's claim that the NRC's 0350 Panel "improperly influenced" FENOC's investigation and motivated FENOC to conduct a "witch hunt" and fire "scapegoats," there is no factual basis for such an allegation. Even if true, however, her claim would not support the relief requested in the Petition. Nothing Ms. Garde asserts affects the basic reasoning underlying the Staff's rejection of the Petition in its Proposed Decision.

Nevertheless, because Mr. Siemaszko's counsel has seized upon this opportunity to draw attention to his complaint and to level baseless accusations at FENOC's management, FENOC is submitting in Attachment 2 a brief response to the additional points raised by Ms. Garde's June 7, 2003 letter. FENOC's comments in that regard are attached.

In sum, FENOC supports the Proposed Decision, which denies the Petition in its entirety. As first stated above, FENOC agrees with the Staff's overall conclusion that the Petition raises no new facts or issues not already known to the NRC. FENOC also agrees that, to the extent Petitioner expresses any legitimate concerns, they have already been, or are currently being, addressed by NRC and/or licensee inspections, investigations or reviews, as appropriate.

FENOC appreciates this opportunity to comment on the Proposed Decision.

Sincerely,



Robert F. Saunders

Attachments

AT/s

cc: Mr. J. E. Dyer, Regional Administrator, NRC Region III
Mr. S. J. Collins, Director, NRC/NRR
Mr. W. D. Travers, NRC EDO
Mr. J.B. Hopkins, DB-1 NRC/NRR Senior Project Manager
Mr. C. S. Thomas, DB-1 NRC Senior Resident Inspector
U.S. Document Control Desk
Congressman Dennis J. Kucinich
Ms. Billie Pirner Garde
Utility Radiological Safety Board

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COMMITMENT LIST

The following list identifies those actions committed to by the Davis-Besse Nuclear Power Station in this document. Any other actions discussed in the submittal represent intended or planned actions by Davis-Besse. They are described only as information and are not regulatory commitments. Please notify the Manager - Regulatory Affairs (419-321-8450) at Davis-Besse of any questions regarding this document or associated regulatory commitments.

<u>Commitment</u>	<u>DUE DATE</u>
None	N/A

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**FENOC'S RESPONSE TO
BILLIE GARDE'S JUNE 7, 2003 LETTER**

1. FENOC Terminated Mr. Siemaszko for Legitimate, Non-Discriminatory Reasons

In her June 7, 2003 letter to the NRC EDO, Ms. Garde alleges that Mr. Siemaszko was wrongfully terminated for having engaged in protected activity. These allegations are largely a reiteration of a Section 211 complaint filed by Mr. Siemaszko on February 15, 2003, to which FENOC responded on April 4, 2003.

Mr. Siemaszko was not terminated for raising safety concerns. Based upon FENOC's several investigations in 2002, FENOC determined that Mr. Siemaszko's job performance fell far below Company standards and expectations.¹ Mr. Siemaszko failed to follow the Boric Acid Corrosion Control procedure and inaccurately recorded the results of his 2000 reactor pressure vessel (RPV) head inspection and cleaning activities in corrective action program documentation. And, Mr. Siemaszko was a key technical contributor to the Company's response(s) to NRC Bulletin 2001-01 and related communications with the NRC in the fall of 2001, which contained inaccurate and/or incomplete statements.

Significantly, on June 6, 2003, the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) dismissed Mr. Siemaszko's complaint, concluding that FENOC had presented clear and convincing evidence that it would have terminated Mr. Siemaszko, whether or not he engaged in any alleged protected activity. The matter is currently, and properly, before a Department of Labor Administrative Law Judge.

2. FENOC Did Not Single Out or Scapegoat Mr. Siemaszko

Ms. Garde also alleges that FENOC singled out and "scapegoated" Mr. Siemaszko for his involvement in the RPV head degradation. Even cursory review of the facts quickly dispels any such notion.

Shortly after the discovery of the RPV head degradation in March of 2002, FENOC launched the first of several internal reviews and investigations into the root causes and circumstances surrounding the event. FENOC's preliminary findings revealed significant human performance and management failures, as well as questions regarding the completeness and accuracy of the Company's responses to NRC Bulletin 2001-01. FENOC's several investigations and reviews

¹ For a fuller accounting of Mr. Siemaszko's performance deficiencies, see FENOC's Response to Supplement to 10 CFR § 2.206 Petition Filed by Congressman Kucinich, dated April 11, 2003, at 8-11, and FENOC's Response to Siemaszko's Section 211 Complaint, dated April 4, 2003.

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resulted in wide-ranging organizational and management changes, as well as numerous personnel actions.

In addition to the many personnel changes effected as part of this vast reorganization, FENOC considered whether disciplinary actions should be taken against those individuals most involved in the missed opportunities to prevent or earlier detect RPV head wastage and/or the inaccuracies in associated documentation. FENOC considered the involvement of 26 individuals, and took personnel actions against 18 individuals, including Mr. Siemaszko, in September 2002. These disciplinary actions ranged from terminations and demotions to unsatisfactory performance ratings, and affected virtually every level of the Davis-Besse organization, from site officers and directors down to line personnel.

The facts show that Mr. Siemaszko's termination was just one of numerous personnel actions taken for individual performance deficiencies in connection with the RPV head degradation. Mr. Siemaszko was not singled out or "scapegoated" for personnel action.

3. FENOC's Termination of Mr. Siemaszko Does Not Have SCWE Implications

By applying the measured approach described above, FENOC believes that it has established the appropriate precedent and sent a clear message to the entire Davis-Besse workforce – that FENOC employees are expected to perform their assigned job duties in a manner consistent with high quality and safety standards, and that they will be held accountable if they do not. If anything, Mr. Siemaszko's termination is indicative of the Company's renewed commitment to individual ownership of, and accountability for, assigned job duties and responsibilities.

Nevertheless, and despite OSHA's recent dismissal of Mr. Siemaszko's discrimination complaint, Ms. Garde continues to allege that Mr. Siemaszko's termination has had an adverse impact on the safety-conscious work environment (SCWE) at Davis-Besse. This allegation has no basis in fact. There is no indication that FENOC's actions, vis-à-vis Mr. Siemaszko, have had a chilling effect on the willingness of employees to raise concerns, or any other adverse effect on SCWE at Davis-Besse. In fact, the evidence is to the contrary. Since discovery of the RPV head degradation in March 2002, surveys of Davis-Besse personnel have shown continuous improvement in Davis-Besse's SCWE. The most recent survey was conducted in March 2003, and demonstrated continuing improvement over the results of the August 2002 survey.

Also contrary to Ms. Garde's assertions, FENOC has not initiated any "attack," professional, personal, or otherwise, against Mr. Siemaszko. In fact, the reverse is true. Ms. Garde, among

others, has used Mr. Siemaszko's allegations to mount a public relations/media campaign against FENOC. Ms. Garde has pursued her client's interests in a highly public manner, widely distributing copies of her various submittals to members of the press, public, and other stakeholders. FENOC has shown remarkable restraint in responding to her numerous and baseless claims. FENOC addressed those claims in its responsive submittals. Ironically, Ms. Garde is now complaining that FENOC has employed the very tactic she began. Under the theory asserted by Ms. Garde, a company would be denied its legal right to defend itself -- either against a Section 2.206 petition or against a Section 211 complaint. Clearly, FENOC is entitled, if not obligated, to answer each of the charges asserted against it.

4. FENOC's Actions Were Independent of the NRC 0350 Process

In this most recent filing, Ms. Garde asserts yet another baseless theory, alleging that NRC's 0350 Panel "improperly influenced" FENOC to take personnel action against Mr. Siemaszko. Specifically, Ms. Garde asserts that a statement made by Mr. Jack Grobe, head of NRC's 0350 Panel, during a July 2002 public meeting, triggered an additional investigation by FENOC, targeting her client. Ms. Garde states: "It was not until July 2002 when Mr. Jack Grobe, NRC Region III and head of the NRC's 0350 Task Force[,] told FENOC that it was not satisfied with the company's failure to take personnel actions toward individuals that FENOC began a 'witchhunt.'"

This allegation is patently untrue, and, on its face, inconsistent with her earlier claims as to the circumstances surrounding Mr. Siemaszko's termination.² A review of the official transcript of the July 16, 2002, meeting between FENOC and the NRC 0350 Panel did not reveal any such statement on the part of Mr. Grobe or any other Panel member. To the contrary, in responding to a question posed by a member of the public about FENOC's actions to improve the plant safety culture, Mr. Grobe specifically stated: "It's certainly not my place to tell Mr. Myers how to fix his problems, it's my place to evaluate how effectively he does it."³

² The Siemaszko complaint, filed by Ms. Garde in February 2003, alleges that Mr. Siemaszko was terminated in retaliation for his efforts to clean the reactor head, discovering the corrosion of the head, and for making recommendations regarding reactor coolant pump maintenance. Those allegations -- also proven patently false -- stand in stark contrast to the theory now alleged.

³ Transcript of NRC - FENOC Public Meeting, July 16, 2002, at 122.

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Moreover, FENOC's review of the conduct of its personnel relative to the RPV head degradation began well before July 16, 2002. Management's review, which led to the September 2002 personnel actions, was a necessary extension of FENOC's other reviews that began before the July meeting cited by Ms. Garde.

In sum, FENOC's review was wholly separate and distinct from the NRC's 0350 process, and was not, and could not have been, triggered by any comments that are alleged to have been made by Mr. Grobe in July 2002. That being the case, it appears that Ms. Garde either has taken Mr. Grobe's statements out of context, or has received erroneous information from other, unofficial sources.