

October 21, 2003

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Brian W. Sheron, Associate Director */RA/*
for Project Licensing and Technical Analysis
Office of Nuclear Reactor Regulation

SUBJECT: SEPTEMBER 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*,
SECTION 2.206

The attached reports give the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of September 30, 2003, there were three open petitions, which were accepted for review under the 2.206 process in the Office of Nuclear Reactor Regulation. One final Director's Decision was issued during the month of September.

Attachment 1 provides a detailed status of the open petitions.

Attachment 2 provides the status of incoming letters that the staff has been reviewing to determine if they meet the criteria for review under the 2.206 process.

Attachment 3 shows the age statistics for the open 2.206 petitions as of September 30, 2003.

Attachment 4 shows the age trend of closed petitions for the last 3 years.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System. In making these readily accessible to the public, the staff has identified another vehicle to address one of our performance goals, i.e., to enhance public confidence.

Attachments: As stated

CONTACT: Donna Skay, NRR
415-1322

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DISTRIBUTION: See next page

Accession No.: ML032730487 *See previous concurrence

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| NAME | DSkay | SLittle* | HBerkow* | ELeeds | BSheron |
| DATE | 10/14/03 | 10/06/03 | 10/07/03 | 10/17/03 | 10/17/03 |

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DISTRIBUTION FOR JULY 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

Dated: October 21, 2003

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Attachment 1

Status of Open Petitions

| <u>Facility</u> | <u>Petitioner/EDO No.</u> | <u>Page No.</u> |
|-----------------------------------|---|-----------------|
| Davis-Besse Nuclear Power Station | Congressman Dennis Kucinich G20030048..... | 1 |
| Indian Point Units 2 and 3 | Richard Blumenthal, Attorney General of the State of Connecticut G20030216..... | 3 |
| Davis Besse Nuclear Power Station | David Lochbaum, Union of Concerned Scientists G20030298..... | 5 |
| Indian Point Units 2 and 3 | Riverkeeper G20030545..... | 7 |

Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

| | |
|--------------------------------------|--|
| Facility: | <u>Davis-Besse Nuclear Power Station</u> |
| Petitioner: | Congressman Dennis Kucinich |
| Date of Petition: | February 3, 2003 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20030048 |
| Proposed DD Issuance: | 06/05/03 |
| Final DD Issuance: | 9/12/03 |
| Last Contact with Petitioner: | 09/12/03 |
| Petition Manager: | Dan Collins (NRR) |
| Case Attorney: | Jack Goldberg |

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC) immediately revoke FirstEnergy Nuclear Operating Company's (FirstEnergy) license to operate the Davis-Besse Nuclear Power Station (DBNPS) for the reasons given in the background.

Background:

In response to the licensee's identification of extensive corrosion to the pressure boundary material of the RPV head on March 5, 2002, the NRC dispatched an Augmented Inspection Team (AIT), issued a Confirmatory Action Letter (CAL) , and enhanced monitoring of corrective actions as described in NRC Inspection Manual Chapter 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems."

Using information from various publicly available documents (such as NRC inspection reports, newspaper articles, and reports published by the Union of Concerned Scientists) to support his case, the Petitioner offers the following five basic arguments, in various forms, on why the Davis-Besse operating license must be revoked:

1. NRC regulations and guidelines require revocation of the Davis-Besse license.
2. Revocation of the Davis-Besse license is necessary to hold FirstEnergy accountable for its violations of NRC regulations and its own operating license.
3. If the NRC doesn't revoke the Davis-Besse license, NRC isn't appropriately using the authority granted it by Congress.
4. Revocation of the Davis-Besse license is necessary in order to ensure that FirstEnergy is complying with all NRC regulations and guidelines.

5. Revocation of the Davis-Besse license is required in order for there to be consistency in the manner that the NRC enforces its regulations.

The staff issued an acknowledgment letter on February 10, 2003, to inform the Congressman that the petition meets the acceptance criteria for review under 2.206. The acknowledgment letter also informed the Petitioner that, pending completion of the NRC's investigative process, the NRC does not have sufficient basis to immediately revoke the Davis-Besse operating license. Thus, the Petitioner's request for immediate revocation of the license was denied.

The petitioner informed the staff on March 12, 2003, that a supplement would be issued in lieu of a presentation to the PRB. The petitioner submitted a supplement to the original petition on March 27, 2003, to address the following additional concerns:

- a. boric acid dust may have corroded electrical systems & cable trays
- b. as-built design may not conform to design or licensing bases
- c. training of personnel may not meet licensing basis
- d. DBNPS does not have ability to detect 1 gpm leakage within 1 hour
- e. procedures instituted by NRC may not uncover or address other systems that may be degraded i.e., RCP seal gasket leakage
- f. The O350 Panel will end and the plant will return to normal monitoring under the ROP before Lessons Learned Task Force recommendations regarding the ROP are implemented
- g. The OI investigation must be completed before NRC allows DBNPS to restart

A closed PRB meeting was held on April 2, 2003, to discuss the additional information provided by the petitioner's March 27, 2003, supplement. The staff decided that no immediate action was warranted, that the supplement should be consolidated with the existing petition, that no new allegations were presented by the petitioner, and that an acknowledgment letter was not necessary.

On April 11, 2003, the staff received the licensee's response to the petitioner's supplement dated March 27, 2003. The information provided supported the staff's early conclusion that the supplement should be consolidated with the existing petition, and that no new allegations were presented by the petitioner. The proposed DD was issued on June 6, 2003. The staff received comments on the proposed Director's Decision from the licensee, the petitioner, and two members of the public.

Current Status:

The staff issued a final Director's Decision on September 12, 2003.

| | |
|--------------------------------------|--|
| Facility: | <u>Indian Point Units 2 and 3</u> |
| Petitioner: | Richard Blumenthal, Attorney General of the State of Connecticut |
| Date of Petition: | April 23, 2003 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20030216 |
| Proposed DD Issuance: | 10/31/03 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | 08/29/03 |
| Petition Manager: | Harold Chernoff |
| Case Attorney: | Jack Goldberg |

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

1. Order the licensee to conduct full review of vulnerabilities, security measures, and evacuation plans and to suspend operations, revoke the operating license, or adopt other measures resulting in temporary shutdown of Indian Point Units 2 and 3.
2. Require the licensee to provide sufficient information to document the existing security measures which provide protection against terrorist attacks.
3. Modify the licensee's operating license to mandate specifically a defense and security system sufficient to protect the entire facility, including electric equipment, containment, spent fuel storage, and the control room from a land or water based terrorist attack.
4. Order the revision of the licensee's Emergency Response Plan and the Radiological Emergency Response Plans of the State of New York and nearby counties to account and prepare for terrorist attacks. These revisions must contemplate not only the full range of realistic effects of a terrorist attack on the Indian Point facility, but also a comprehensive response to multiple attacks on the region's infrastructure that could affect execution of the evacuation plans.
5. If, after taking the above actions, the NRC cannot adequately ensure the security of the Indian Point facility against terrorist threats, or cannot ensure the safety of New York and Connecticut citizens from terrorist attacks, that it take prompt action to permanently retire the facility.

Background:

A closed PRB meeting was held on May 8, 2003, to discuss whether the petition satisfies the criteria for review under 10 CFR 2.206.

During this meeting the PRB decided that no immediate action was necessary. The PRB also recommended that security issues regarding potential terrorist attacks be handled separately from the issues associated with the emergency response plan by addressing the security issues in a partial Director's Decision.

By letter dated June 3, 2003, the petitioner filed a supplement to his original 2.206 Petition. The supplement provided additional information in support of the petition in three major areas: (1) shadow evacuation effects, (2) family separation, and (3) recent design-basis threat changes.

On June 19, 2003, the PRB held a conference call with the petitioner's representative (Assistant Attorney General, Robert Snook) to afford the petitioner the opportunity to provide additional information or clarification with regards to the original petition and the recently submitted supplement.

Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206. An acknowledgment letter was sent to the petitioner on July 3, 2003, stating that the petition has met the criteria for evaluation under 10 CFR 2.206

Current Status:

The NRC staff has received a copy of a letter from FEMA to Mr. Blumenthal addressing his concerns which are similar to those that Mr. Blumenthal provided to the NRC. The staff will coordinate with FEMA in the development of its conclusions.

The petitioner's staff has told the NRC that he will be providing additional information to the NRC.

| | |
|-------------------------------|---|
| Facility: | <u>Davis Besse</u> |
| Petitioner: | David Lochbaum, Union of Concerned Scientists James Riccio, Greenpeace Paul Gunter, Nuclear Information & Resource Service |
| Date of Letter: | August 25, 2003 |
| EDO Number: | G20030508 |
| Proposed DD Issuance: | February 3, 2004 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | September 17, 2003 |
| Petition Manager: | Mel Fields |
| Case Attorney: | Antonio Fernandez |

Issues/Actions requested:

That the NRC:

(1) take enforcement action against FirstEnergy Nuclear Operating Company for failure to live up to its commitments made in response to the NRC's October 1996 10 CFR 50.54(f) letter. Since the 50.54(f) letter was issued in direct response to the problems at Millstone that netted its owner a record \$2.1 million fine from the NRC, failure to heed the Millstone warning should carry at least an equivalent sanction.

(2) take enforcement action against First Energy for the numerous design basis violations dating back to the date of licensing with penalties for each day that the licensee was out of compliance with NRC regulations.

(3) suspend the license and prohibit restart of the Davis-Besse reactor unless and until FirstEnergy has adequately addressed all 1,000 design basis deficiencies identified in 1997,

(4) suspend the license and prohibit restart of the Davis-Besse reactor unless and until FirstEnergy has updated its Probabilistic Risk Assessment to reflect the flaws in its design and licensing basis, and

(5) suspend the license and prohibit restart of the Davis-Besse reactor with any systems in a "degraded but operable" condition.

Background:

A public meeting was held between the petitioners and the Petition Review Board on September 17, 2003. The transcript from the meeting will be treated as a supplement to the petition. Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206.

Current Status:

The staff issued a letter to the petitioner on October 7, 2003, acknowledging receipt of the petition. The staff will supplement the acknowledgment letter to address the requests for immediate action prior to the NRC granting approval for restart. The petition is under review by the staff.

Facility: Indian Point Units 2 and 3
Petitioner: Alex Matthiessen, Riverkeeper
David Lochbaum, Union of Concerned Scientists
Date of Petition: September 8, 2003, as supplemented on
September 22, 2003
Director's Decision to be Issued by: NRR
EDO Number: G20030545
Proposed DD Issuance: TBD
Final DD Issuance: TBD
Last Contact with Petitioner: September 24, 2003
Petition Manager: Brian Benney
Case Attorney: Jack Goldberg

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

1. Issue an Order requiring Entergy to immediately shut down Indian Point Units 2 and 3 and maintain the reactors shut down until such time that the containment sumps are modified to resolve the Generic Safety Issue 191 problem; or
2. Issue an Order requiring Entergy to prevent restart of Indian Point Units 2 and 3 from their next scheduled refueling outages until such time that the containment sumps are modified to resolve the GSI-191 problem; and

Require Entergy to (a) maintain all equipment needed for monitoring leak-before-break of reactor coolant pressure boundary components within containment fully functional and immediately shutdown the affected reactor on any functional impairment to monitoring equipment, and (b) refrain from any activity under 10 CFR 50.59, 10 CFR 50.90, Section VII.C, or GL 91-18, Revision 1 that increases or could increase the probability that a loss-of-coolant accident occurs.

Background:

A public PRB meeting was held with the petitioners on September 24, 2003. The petitioners presented the staff with a supplement to their petition dated September 22, 2003. The transcript from the meeting will also be treated as a supplement to the petition. The licensee stated that it would be submitting a response to the petition. Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206.

Several letters have been received by the NRC separately in support of the Riverkeeper petition. The NRC staff will inform the authors of those letters of the status of its review of the Riverkeeper petition but will not open separate 2.206 reviews for these letters.

Current Status:

The staff is reviewing the petition and supplement to evaluate the need for any immediate actions. Following this evaluation, the staff will issue a letter to the petitioners acknowledging receipt of the petition and addressing the need for immediate action.

Attachment 2

Status of Potential Petitions Under Consideration

| | |
|---------------------|---|
| Facility: | Maine Yankee |
| Petitioner: | Randall Speck, Special Counsel for the State of Maine |
| Date of Letter: | November 15, 2002 |
| Responsible Office: | NMSS |
| PRB meeting: | To be scheduled |

Issues/Actions requested:

That the NRC conduct a hearing on the efficacy of indefinite, long-term spent fuel storage at Maine Yankee.

Resolution:

The petitioner has also requested a hearing, pursuant to 10 CFR 2.202, regarding the October 16, 2002, safeguards order and interim compensatory measures. On December 10, 2002, the staff sent a letter to the petitioner stating that a decision on the acceptability of the 2.206 petition will be held in abeyance until the staff makes a determination on the hearing request. This letter remains as a potential 2.206 petition but the staff cannot consider whether it will be treated as a 2.206 petition until the Licensing Board settles the issues before it.

Attachment 3

AGE STATISTICS FOR AGENCY 2.206 PETITIONS

| ASSIGNED ACTION OFFICE | FACILITY | Incoming petition | PRB meeting ¹ | Acknowledgment letter / days from incoming ² | Proposed DD issuance Date/ age ³ | Scheduled date for final DD/ age ⁴ | Comments if not meeting the Agency's Completion Goals |
|------------------------|--------------|-------------------|--------------------------|---|---|---|---|
| NRR | Davis Besse | 02/03/03 | 02/05/03 | 02/10/02 7 | 06/06/03 116 | 09/12/03 67 | Issuance of the Final DD was delayed due to the need to address substantial comments received on the proposed DD. |
| NRR | Indian Point | 04/23/03 | 05/08/03 | 07/03/03 70 | 10/31/03 scheduled | TBD | Staff delayed issuing acknowledgment letter pending submittal of a supplement by the petitioner (received on June 3). Due to scheduling conflicts a teleconference with the petitioner was not completed until June 19. |
| NRR | Davis Besse | 08/25/03 | 9/17/03 | 10/07/03 43 | 02/03/04 | TBD | |
| NRR | Indian Point | 09/08/03 | 9/24/03 | 10/16/03 scheduled | TBD | TBD | |

- 1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition (there is often a delay of up two weeks from the date that the letter is issued until it is received by the reviewing organization).
- 2) Goal is to issue acknowledgment letter within 5 weeks of the date of incoming petition.
- 3) Goal is to issue proposed DD within 120 days of the acknowledgment letter.
- 4) Goal is to issue final DD within 45 days of the end of the comment period.

Attachment 4

Average Days to Issuance of Proposed Directors Decisions

