

EDO Principal Correspondence Control

FROM: DUE: 01/09/04

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DOC DT: 12/17/03  
FINAL REPLY:

Jim Riccio  
Greenpeace

TO:

Chairman Diaz

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 03-0814

Chairman Diaz

DESC:

Davis Besse

ROUTING:

Travers  
Norry  
Paperiello  
Kane  
Collins  
Dean  
Burns/Cyr  
Caldwell, RIII

DATE: 12/30/03

ASSIGNED TO:

NRR

CONTACT:

Dyer

SPECIAL INSTRUCTIONS OR REMARKS:



# GREENPEACE

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December 17, 2003

Chairman Nils J. Diaz  
Commissioner Jeffrey S. Merrifield  
Commissioner Edward McGaffigan, Jr.  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Chairman and Commissioners:

As the U.S. Nuclear Regulatory Commission contemplates the restart of the Davis Besse reactor, your agency has yet to adequately address one of the underlying causes that led to the massive regulatory failure on the part of the NRC and allowed the Davis Besse reactor to threaten the public health and safety.

The issue, which the NRC has failed to acknowledge let alone address, concerns the relationship between the Commission and those organizations that have insinuated themselves into the regulatory process. Rather than issue regulations, the NRC has increasingly relied on organizations such as the Nuclear Energy Institute, as well as reactor owners groups to address safety concerns within the nuclear industry. Whether through the NRC's Voluntary Industry Initiatives in Lieu of Regulation or other programs initiated by the agency or industry groups, the NRC has handed over reactor safety issues to the industry without the necessary oversight to assure that these programs were implemented and enforced.

I feel it is imperative that these issues are brought to your attention because the NRC staff has actually deleted these findings and recommendations from the Davis Besse Lessons Learned Task Force Report (DBLLTF) and my attempts to address these concerns through discussions with your Office of General Counsel have proven fruitless.

According to draft versions of the NRC's Davis Besse Lessons Learned Task Force Report, "NRC staff based its conclusion that no unreviewed safety question existed ... based on *de facto* commitments made by the B&WOG on behalf of its member utilities." However, "No mechanism existed to ensure that owners group member utilities implemented the *de facto* commitments made to the NRC."

However rather than address the issue the NRC staff saw fit to delete the following recommendation from the Davis Besse Lessons Learned Task Force Report:

**Review the legal status of owners group communications with the NRC to determine if actions or commitments identified by the owners groups on behalf of their member utilities are enforceable upon individual licensees.**

The NRC staff attempted to claim that the recommendation cited above was beyond the scope of the Davis Besse Lessons Learned Task force report. Regardless of the veracity of the staff's claims, the underlying issue has yet to be addressed. Unless the NRC has the ability to hold licensees accountable for the commitments made on their behalf by nuclear industry groups, nuclear industry initiatives are worth less than the paper they're printed on and are not legitimate substitutes for NRC regulation.

While I realize that First Energy and the NRC are both currently under investigation for their failures at Davis Besse, these investigations should not preclude the NRC from addressing the regulatory and policy issues that contributed to the Davis Besse debacle. The NRC staff should not be granting licensing requests until it first establishes that commitments pro-offered by trade and owners groups on behalf of licensees are enforceable and that NRC has the ability to verify that such binding commitments are implemented. Absent this, the public can have no confidence that nuclear industry initiatives adopted by the NRC actually address the safety concerns they were supposed to eliminate.

I eagerly await a response to the concerns raised in this letter. If you or your staff have any questions regarding this correspondence, please feel free to contact me at 202-319-2487.

Sincerely, -



Jim Riccio  
Nuclear Policy Analyst  
Greenpeace

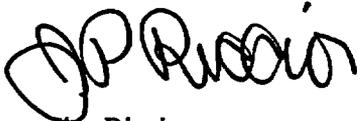
CC: Representative Dennis Kucinich  
Representative Marcy Kaptur  
Representative Jim Greenwood  
Representative Edward J. Markey  
U.S. NRC Inspector General  
U.S. General Accounting Office

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