

February 26, 2004

Mr. Jim Riccio
Greenpeace
702 H Street, NW, Suite 300
Washington, D.C. 20001

Dear Mr. Riccio:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of December 17, 2003, regarding resolution of certain issues related to the degradation of the reactor pressure vessel head at Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse). In particular, you expressed concerns that: (1) a conclusion and a recommendation regarding NRC dependence on commitments made by an owners' group on behalf of its member utilities were deleted from the Davis-Besse Lessons-Learned Task Force (LLTF) Final Report (ADAMS Accession No. ML022760305); and (2) nuclear power plant licensees should be held accountable for commitments made on their behalf by industry groups.

With respect to the first matter, you referred to a conclusion and a recommendation included in earlier drafts of the report that were not included in the LLTF Final Report. The conclusion (as reflected in the draft report, ML031110294) and recommendation (in ML031120686) were in Section 3.2.3 of the report, regarding owners' group and industry guidance. The draft conclusion was as follows:

... the NRC staff based its conclusion that no unreviewed safety question existed for the A600 CRDM penetration cracking issue based on *de facto* commitments made by the B&WOG on behalf of its member utilities . . . No mechanism existed to ensure that owners' group member utilities implemented the *de facto* commitments made to the NRC.

The draft recommendation was:

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.

As stated in Section 3.2.3.1 of the LLTF Final Report, "In 1993, the NRC requested that each PWR owners' group provide a safety evaluation to document why no unreviewed safety question existed for Alloy 600 VHP nozzle cracking." The Babcock & Wilcox Owners' Group (B&WOG) documented its safety evaluation, in report BAW-1090P, on May 26, 1993. The licensee developed commitment tracking item A16892 to ensure that the B&WOG provided its safety evaluation to the NRC; however, the item did not ensure that the bases of the B&WOG safety evaluation, which was reviewed and accepted by the NRC, would be implemented at Davis-Besse.

The LLTF primarily faulted the licensee for not following through appropriately. Although stated somewhat differently than in the earlier draft, the LLTF also faulted the NRC for not having an established process for periodic verification of owners' group commitments. These deficiencies were addressed in the LLTF Final Report with the following recommendations:

- 3.1.2(2) The NRC should establish review guidance for accepting owners' group and industry resolutions for generic communications and generic issues. Such guidance should include provisions for verifying implementation of activities by individual owners' groups and licensees;
- 3.2.3(1) The NRC should review a sample of NRC safety evaluations of owners' group submissions to identify whether intended actions that supported the bases of the NRC's conclusions were effectively implemented; and
- 3.2.3(2) The NRC should develop general inspection guidance for the periodic verification of the implementation of owners groups' commitments on behalf of their members.

Notwithstanding the wording of the draft recommendation, the focus of the LLTF was not on whether owners' group commitments were legally binding on their member utilities, but on how the NRC ensures that it is getting reliable information from the owners' groups, as well as on how industry submittals were implemented by individual licensees. The draft conclusion was the initial effort to capture that finding. Changes to the draft report were the consensus of the entire LLTF. In this instance, the changes were editorial in nature since the LLTF's finding regarding unverified information submitted by owners' groups is discussed in the report, and the LLTF felt that the final recommendations addressed the concern. Completion of the LLTF recommendations by the staff is being tracked by the Office of the Executive Director for Operations. The above recommendations are on schedule to be completed by December 31, 2004.

With respect to the licensee's commitment A16892, the LLTF Final Report notes that the licensee's documentation stated that "performing an enhanced visual inspection was an NRC-recommended action, but was not a requirement." Commitments made by owners' groups on behalf of member utilities are subject to interpretation by those utilities and are not binding on individual licensees. The issue in this instance was lack of a process to require periodic verification on the part of the NRC, which the LLTF addressed in recommendation 3.2.3(2) above.

In regard to your second concern, regulatory commitments are matters in which the staff has a significant interest but which may not in the specific circumstances require either a legally binding requirement, such as a license condition, or inclusion in a program subject to a formal regulatory change control mechanism, such as the updated final safety analysis report. Commitments made by industry groups on behalf of member utilities are not by themselves legally binding on individual licensees, and the NRC does not rely upon industry group commitments in reviewing plant-specific licensing actions. The LLTF Final Report addressed NRC management of licensee commitments in recommendation 3.3.7(5), which advised the NRC to either fully implement or revise the staff guidance on commitment management. The

Office of Nuclear Reactor Regulation subsequently issued guidance on managing regulatory commitments in Office Instruction LIC-105, "Managing Commitments Made by Licensees to the NRC," which is available for reference in ADAMS (ML022750041). LIC-105 may help your understanding of the background and requirements of regulatory commitments.

I hope the above information adequately addresses your concerns. In addition, since your letter apparently implies improper conduct on the part of the NRC staff, it was referred to the Office of the Inspector General for appropriate action. The NRC continues to strive to ensure protection of public health and safety. I am pleased that you care about this goal and I look forward to your continued input into regulatory processes. If you have further requests or questions, please contact Mr. William H. Ruland of the Office of Nuclear Reactor Regulation at 301-415-1389.

Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

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Sincerely,

/RA/

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

ADAMS Accession Number: ML040140421 (Package)

ADAMS Accession Number: ML033650133 (Incoming)

ADAMS Accession Number: ML040140077 (Response)

*previously concurred

**via email

***via phoncon

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COMMITMENTS RE: DAVIS-BESSE LESSONS-LEARNED TASK FORCE REPORT

DATED: February 26, 2004

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