

March 9, 2004

Ms. Sandy Buchanan
Executive Director
Ohio Citizen Action
614 W. Superior Avenue, Suite 1200
Cleveland, Ohio 44113

Dear Ms. Buchanan:

I have been asked to respond to the concerns regarding Davis-Besse raised in your letters of December 15, 2003, and February 12 and 25, 2004. In your letter of December 15, 2003, you expressed concern that: FirstEnergy's safety culture has not improved since October 2002, survey results were obscured by data manipulation, and surveys showed evidence of retaliation for raising safety concerns; Davis-Besse employees were working excessive overtime; and Davis-Besse has an excessive amount of deferred work items. In your February 12, 2004, letter, you expressed concern that: FirstEnergy could not turn around its corporate culture in a two month period; FirstEnergy's financial situation is worse than it was two years ago; and FirstEnergy has not been punished for the circumstances surrounding the corrosion of the Davis-Besse reactor pressure vessel head. In your February 25, 2004, letter, you expressed concern that if the NRC grants restart permission before the U.S. Department of Justice investigation is complete then the NRC will be sending a signal that public safety is not its mandate. You further requested in your February 25 letter that the NRC determine the current roles of FirstEnergy managers who were in key management positions at Davis-Besse since 1996 so that the public can have confidence in FirstEnergy's new decision-making.

The NRC's primary mission is to protect the health and safety of the public and ensure that each U.S. commercial nuclear power plant operates safely. This is our most important responsibility, and we take this mandate very seriously. Each of your concerns was carefully considered during the NRC's deliberations leading to the March 8, 2004, determination to lift the restriction NRC placed on the Davis-Besse facility restart.

The NRC has performed a phased assessment of the licensee's Management and Human Performance area of the Return to Service Plan, which included actions to improve the areas of safety culture and safety conscious work environment. The first phase evaluated the adequacy of the licensee's root cause assessments of organizational and human performance contributors to the reactor head degradation. The second phase evaluated the adequacy of the licensee's corrective actions and the third phase evaluated the effectiveness of those corrective actions. The reports for those inspections are enclosed for your information.

In November 2003, as part of the licensee's periodic assessment of safety culture and safety conscious work environment, the licensee conducted an anonymous survey of its staff. That survey revealed that site-wide results were steady or improving; however, several areas in certain key departments had declined from the March 2003 survey. In order to understand the causes and corrective actions regarding the changes in some plant staff's attitudes, the NRC

performed a follow up inspection focused on the licensee's evaluation and response to those November 2003 survey results. A memorandum documenting the results of that follow up inspection and recommending closure of Restart Checklist Item 4.b, "Effectiveness of Corrective Actions" in the area of "Adequacy of Organizational Effectiveness and Human Performance" is enclosed for your information.

The results of the NRC inspections into the management and human performance area concluded that FirstEnergy had conducted adequate cause assessments, completed sufficient corrective actions, established effective assessment techniques for measuring organizational improvement and responded adequately to its internal and external assessments, including the November 2003 survey results. No data manipulation was noted by the NRC inspectors. The NRC concluded prior to lifting its restriction on restart of Davis-Besse that sufficient progress had been made in this area to provide reasonable assurance of safe restart and operation of the facility.

Regarding your concern about overtime by Davis-Besse workers, the NRC's Davis-Besse Oversight Panel (Panel) reviewed overtime usage and determined that it was controlled within regulatory requirements. Further, the Panel identified no performance deficiencies attributed to fatigue. Regarding deferred work items, the NRC reviewed the backlog of restart work items as documented in NRC Inspection Report 50-346/2003-24. The inspection concluded that the deferred items did not individually or collectively represent a significant risk impact on safe plant operation. A copy of that report is enclosed for your information.

Regarding your concern that FirstEnergy's financial situation is worse now than it was two years ago when the Davis-Besse problems were discovered, the NRC has not found FirstEnergy unable to meet its financial qualifications and obligations required by its operating license. FirstEnergy has provided the necessary financial support for the restart of Davis-Besse. In addition, the staff's review of the biannual update of the decommissioning trust fund required by 10 CFR 50.75(f)(1), submitted in March 2003, has not revealed any problems with their contributions to the decommissioning trust fund.

Finally, regarding your concern that the NRC has not taken enforcement action associated with any violations of regulatory requirements that resulted in the reactor head degradation, the NRC has deferred enforcement action until the completion of the ongoing federal investigation in accordance with the Memorandum of Understanding between the NRC and the Department of Justice (MOU). A copy of that MOU is enclosed for your information.

The NRC's Office of Investigations provided their investigation report to the Region III Regional Administrator and the Panel. To evaluate whether there were safety issues requiring immediate enforcement action, the Regional Administrator chartered a team of NRC staff and managers from Region III and the headquarters Offices of Nuclear Reactor Regulation, Enforcement, and General Counsel to carefully review the investigation report. Their review included an assessment of the current role of any individual potentially implicated of wrongdoing in the investigation results. The review team concluded that there were no immediate safety issues requiring enforcement action at that time. Those conclusions were presented to and accepted by the Panel and NRC senior management.

Consistent with the MOU, the NRC's Office of Investigations also provided its investigation report to the Department of Justice. The continuing investigation into these matters is being led by the United States Attorney's Office in Cleveland, Ohio, with support from the NRC's Office of Investigations. Should any evidence be disclosed indicating the need for immediate enforcement action to address a safety concern, that action will be taken consistent with the MOU and the NRC's Enforcement Policy and Enforcement Manual. Otherwise, further NRC enforcement action will be deferred until the completion of the ongoing federal investigation.

I am confident that this information is responsive to your concerns. Do not hesitate to contact the NRC if you have any further questions.

Sincerely,

/RA/

John A. Grobe, Chairman
Davis-Besse Oversight Panel

Docket No. 50-346
License No. NPF-3

Enclosures: 1. NRC Inspection Report No. 50-346/2002-15(DRP) dated February 6, 2003
 2. NRC Inspection Report No. 50-346/2002-18(DRP) dated July 24, 2003
 3. NRC Inspection Report No. 50-346/2003-12(DRP) dated February 27, 2004
 4. Memorandum from G. C. Wright to J. A. Grobe dated February 25, 2004
 5. NRC Inspection Report No. 50-346/2003-24(DRS) dated January 5, 2004
 6. Memorandum of Understanding between the NRC and DOJ dated
 November 23, 1988

cc w/encl: The Honorable Dennis Kucinich
 L. Myers, Chief Operating Officer - FENOC
 G. Leidich, President - FENOC
 Plant Manager
 Manager - Regulatory Affairs
 M. O'Reilly, Attorney, FirstEnergy
 Ohio State Liaison Officer
 R. Owen, Administrator, Ohio Department of Health
 Public Utilities Commission of Ohio
 President, Board of County Commissioners
 Of Lucas County
 C. Koebel, President, Ottawa County Board of Commissioners
 D. Lochbaum, Union Of Concerned Scientists
 J. Riccio, Greenpeace
 P. Gunter, N.I.R.S.

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML040700677.wpd

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

| | | | | | | | | |
|--------|-----------|--|----------|--|------------------------|--|----------|--|
| OFFICE | RIII | | RIII | | RIII | | RIII | |
| NAME | CLipa:ags | | RPaul | | WRuland per telecon | | JGrobe | |
| DATE | 03/09/04 | | 03/09/04 | | 03/09/04 | | 03/09/04 | |

OFFICIAL RECORD COPY

ADAMS Distribution:

AJM

DFT

SPS1

RidsNrrDipmlipb

GEG

HBC

CST1

C. Ariano (hard copy)

C. Pederson, DRS (hard copy - IR's only)

DRPIII

DRSIII

PLB1

JRK1