

Howard C. Whitcomb, III
Attorney At Law

Telephone: (419) 241-4141

405 Madison Ave, Suite 1440
Toledo, Ohio 43604-1207
Fax: (419) 241-4377

February 14, 2004

Mr. James Caldwell
U. S. Nuclear Regulatory Commission
Administrator - Region III
801 Warrenville Road
Lisle, IL 60532-9730

RE: Concerns Regarding The Restart Of The Davis-Besse Nuclear
Power Station (dated 02/12/04)

Dear Mr. Caldwell;

Enclosed please find a copy of the comments which I was unable to personally communicate to you at the Davis-Besse restart meeting on Thursday, February 12, 2004 at Camp Perry, Port Clinton, Ohio. While the nature and subject content of my comments are self-explanatory, please be advised that because certain conflicts of interests still exist, the credibility of any recommendations that are made to you by the current 0350 Oversight Panel should be carefully challenged and rejected, as necessary. I am available to discuss this matter in more detail with you or members of your staff if you wish. I may be reached during normal working hours at (419) 241-4141.

I have raised these as well as other concerns upon several occasions and to date, I have not been contacted by anyone from the NRC. It appears that the NRC has simply decided that my concerns are not valid. The NRC has failed to provide any explanation or basis for its decision. Although the NRC has chosen to ignore these concerns, it does not diminish the legitimacy of them. Furthermore, the concerns are well documented and are contained within the transcripts of the public record routinely maintained at the public meetings. Under current federal law, these transcripts are accessible to the public.

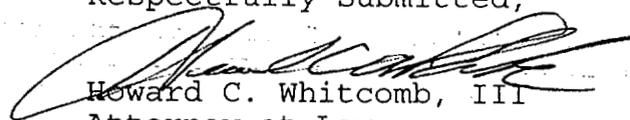
The Atomic Energy Act of 1954, as amended, (the Act) provides reactor and public safety through a labyrinth of processes. The processes are imposed upon licensees and regulators by federal law. No one has impunity or protected privilege for Section 223

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violations of the Act. The restart of the Davis-Besse Nuclear Power Station is not possible pursuant to 10 CFR 50.54(f) without resolution of these concerns and their basis.

I await your prompt attention and response to this very serious matter. Please provide me with the allegation number that you assign to the subject matter of this correspondence so that I may track the progress of your investigation in the future.

Respectfully Submitted,



Howard C. Whitcomb, III
Attorney at Law
Resident of Ottawa County, Ohio

Enclosure

cc: (w/encl)

Mr. Hubert Bell, Inspector General
US Senator Mike DeWine
US Senator George V. Voinovich
US Rep. Marcy Kaptur
US Rep. Dennis J. Kucinich

DAVIS-BESSE NUCLEAR POWER STATION STATUS MEETING
FEBRUARY 12, 2004
CAMP PERRY, PORT CLINTON, OHIO

Comments by: Howard C. Whitcomb, III, Esq.
Bs. Address: 405 Madison Avenue Suite 1440
Toledo, OH 43604-1207
(419) 241-4141

Good evening:

It has been twenty-seven (27) months since the NRC's notorious and ill-advised decision to allow the continued operation of the Davis-Besse Nuclear Power Station with a known degraded reactor vessel head. The assemblage of the senior NRC officials here tonight is somewhat reminiscent of that time. Mr. Collins, Mr. Grobe and Mr. Dyer, who played key roles in the November 2001 decision, are once again key players in the recommendation and decision to allow the restart of the Davis-Besse Nuclear Power Station. In November 2001, Mr. Collins was the Director of Nuclear Reactor Regulation; Mr. Dyer was the Region III Administrator and Mr. Grobe was the Region III Director, Division of Reactor Safety. Since November 2001, it is apparent by its actions that the NRC continues to deny accountability as a major role player with respect to the degraded reactor vessel head at Davis-Besse. In fact, Mr. Collins and Mr. Dyer have since been promoted to higher levels of authority within the NRC and Mr. Grobe sits as the Chairman of the 0350 Oversight Panel. In addition, the Davis-Besse NRC Resident Inspector in November 2001 has been promoted and is currently assigned as the Senior Resident Inspector at another nuclear facility.

Since the initial reports of the pineapple-sized hole in the Davis-Besse reactor vessel head, numerous meetings have been held to identify and address the reasons why this hole was allowed to develop and occur. Some of these meetings have been open to the public and have been held on a monthly basis. These monthly meetings have been held under the pretense of public safety. The NRC has claimed that these meetings were being held to facilitate a meaningful exchange between members of the public and the NRC regarding the various problems identified at the Davis-Besse Nuclear Power Station. With the exception of media personnel, I have attended as many of these meetings as anyone else in this room. From time to time, I have identified concerns and placed them upon the public record. To date, the NRC has failed to respond to most, if not all, of my concerns.

Of primary importance, I have challenged the validity and sufficiency of the NRC's current inspection process. I have previously indicated upon the public record very specific conflicts

of interests that exist relative to Mr. Grobe, Mr. Collins and Mr. Dyer as they pertain to their current assignments. The identification and elimination of these specific conflicts of interest are necessary in order to re-establish a public confidence in the NRC's ability to fulfill its duties under existing federal law. These concerns include issues of credibility regarding the limited findings and recommendations of the NRC's Lessons Learned Task Force which were published in November 2002 as well as a lack of implementation of these recommendations. Unfortunately, the NRC has ignored these identified conflicts of interests over the last two years and they remain unchallenged on the eve of the critical decision to allow the restart of the Davis-Besse Nuclear Power Station. A decision to allow restart of the Davis-Besse Nuclear Power Station is not possible while these conflicts of interest remain unaddressed.

Mr. Caldwell, through these comments, you now have personal knowledge of these conflicts of interests. Mr. Caldwell, the recent letter which was issued under your signature and addressed to "Dear Citizen" amounts to little more than a placebo. It is obvious that the time you spent in crafting your response was not commensurate with the time it took for the many members of the public to prepare and submit their concerns to you. Mr. Caldwell, in that letter to the public issued in December 2003 regarding the Davis-Besse Nuclear Power Station, you state that "no other operational issue has received more attention from the agency in the past two years." If that is so, why is this the first time that you have attended a monthly public meeting in Northwest Ohio? Mr. Caldwell, you also state in your letter that:

"The oversight panel has monitored the ongoing investigation by the NRC's Office of Investigations which is looking at possible wrongdoing in connection with the reactor vessel head damage. The findings of this investigation will be fully considered in any decision for possible restart of the plant."

To date, none of the findings of the Office of Investigation have been made known to the public. The reason for that, in part, is due to the current investigation of the Federal Grand Jury in Cleveland, Ohio. That investigation is on-going and the results have not yet been published regarding the grand jury's findings. That process may expose new problems which are yet to be known. No one knows the extent or significance of the problems identified through the grand jury investigation.

As it relates to nuclear safety and the health, welfare and safety of the public, the public has an absolute right to know about these findings; to review them in detail, and; have an opportunity to submit comments through the established NRC process PRIOR TO THE NRC MAKING ANY DECISION WHICH AUTHORIZES THE RESTART OF THE DAVIS-BESSE NUCLEAR POWER STATION. Any attempt to circumvent that process by the NRC or anyone else is a violation of federal law. Because today's meeting is being considered as the final

meeting for receiving public comments prior to the decision regarding the restart of the Davis-Besse Nuclear Power Station, it appears that the NRC is attempting to circumvent the process and proceed with making its decision prior to receiving the findings of the federal grand jury and/or the public comments regarding the findings. As such, Mr. Caldwell, I am very troubled that the recommendation and/or decision to allow the restart of the Davis-Besse Nuclear Power Station has been relegated to you.

The protection of the public's health, welfare and safety is not discretionary. The NRC, as well as each individual licensee, has a legal obligation to hold accountable anyone who violates federal law. It is not possible to have a hole in the reactor vessel head without committing a deliberate violation of the law. The hole is the result of a repeated and deliberate refusal to perform required maintenance on critical plant equipment. The public has a right to know the identity of those individuals who are responsible for the degraded reactor vessel head at the Davis-Besse Nuclear Power Station.

I have previously raised a concern that the corrective action program at the Davis-Besse facility remains incomplete and that the material condition of the plant equipment remains unknown. These comments were based, in part, upon the reports received at these public meetings. In the last six (6) months alone, the following has been reported:

- 1) Inadequacies in equipment and system designs
- 2) Equipment malfunctions and failures
- 3) Operational errors
- 4) Procedural inadequacies
- 5) Continued acts of employee intimidation

We are seeing recurring equipment problems today which were central to the June 9, 1985 event. The performance and material condition of the Auxiliary Feedwater System continues to be problematic and suspect. It is no longer a probabilistic uncertainty for a through wall breach of the reactor coolant pressure boundary. We have a known failure rate of one in twenty five reactor years. We have also learned that the Davis-Besse Nuclear Power Station was operated while its defense in-depth safety systems were actually, but not declared to be, inoperable. The NRC has previously determined that the maintenance practices at the Davis-Besse facility were superficial. The same is true today. The cultural attributes involving a systemic refusal to perform maintenance have survived during at least four distinct management regimes since 1985 and still exists today. The same promises that "things are now different" have been verbalized by FirstEnergy in the past, yet we keep assembling behind the "woodshed".

I have additionally challenged the adequacy of FirstEnergy's Quality Assurance and Maintenance Programs. I have not received any

feedback from the NRC. Irrespective of Mr. Ruland's personal opinion and response to my concerns at the last meeting, the role of the NRC at these public meetings is to receive and address public comments. Providing open criticism of comments received at the public meetings is intimidating for some and may have a chilling effect on others to advance concerns in an open public forum. This is clearly not the role of the NRC. There are a number of other specific concerns that I have previously raised at these meetings. As I do not intend to re-visit each of those concerns in detail today, they are contained in the recorded transcripts and are available for your review and action.

FirstEnergy's current economic crisis is irrelevant as it relates to the decision to restart the plant. Time after time, FirstEnergy has pronounced a corporate philosophy which places "production over safety". There is no reason to believe that the same philosophy isn't true today. The hole in the Davis-Besse reactor vessel head has again reminded us that when the regulatory process fails the public health, welfare and safety is jeopardized. (i.e., is no public safety). It also re-emphasizes that no individual has impunity under the Atomic Energy Act regarding public safety. Under existing federal law, it is incumbent upon EVERYONE OF US IN THIS ROOM to raise issues of nuclear safety when they become known to us. The source of the concern IS UNIMPORTANT. When an issue relative to nuclear safety is identified, it must be forthrightly addressed and appropriately resolved to everyone's satisfaction. THERE IS NO OTHER OPTION OR PROCESS. MR. CALDWELL, UNDER EXISTING FEDERAL LAW, YOU CANNOT RECOMMEND RESTART OF THE DAVIS-BESSE NUCLEAR POWER STATION UNTIL THESE CONCERNS, INCLUDING THE FINDINGS AND CONCLUSIONS OF THE FEDERAL GRAND JURY, HAVE BEEN APPROPRIATELY ADDRESSED AND RESOLVED.