

May 5, 2004

Mr. James Wells, Director
Natural Resources and Environment
United States General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Wells:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of April 2, 2004, requesting the NRC's review of the draft report entitled "Nuclear Regulation: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown" (GAO-04-415). I appreciate the opportunity to provide comments to the General Accounting Office (GAO) on this report.

I am concerned that the draft report does not appropriately characterize or provide a balanced perspective on the NRC's actions surrounding the discovery of the Davis-Besse reactor vessel head condition or NRC's actions to incorporate the lessons learned from that experience into our processes. The NRC also does not agree with two of the report's recommendations, as discussed in the following paragraphs.

The first sentence of the draft report states: "...oversight did not generate accurate, complete information on plant conditions." I agree that our oversight program should have identified certain evolving plant conditions for regulatory follow-up. This was also identified in the report of the Davis-Besse Lessons Learned Task Force (LLTF) that the NRC formed to ensure that lessons from the Davis-Besse experience are learned and appropriately captured in the NRC's formal processes. However, the draft report does not acknowledge that the NRC, in carrying out its safety responsibilities, must rely heavily on our licensees to provide us with complete and accurate information. In fact, Title 10 of the Code of Federal Regulations Section 50.9 requires that information provided to the NRC by a licensee be complete and accurate in all material respects. The report should clearly indicate that NRC's licensees are responsible for providing us with accurate and complete information. While the NRC's Davis-Besse LLTF concluded that the NRC, the Davis-Besse licensee (FirstEnergy), and the nuclear industry failed to adequately review, assess, and follow up on relevant operating experience, they also noted that the information that FirstEnergy provided in response to Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles" was inconsistent with information identified by the task force. Further, the LLTF report stated that had this information been known in the fall of 2001, "...the NRC may have identified the VHP [vessel head penetration] nozzle leaks and RPV [reactor pressure vessel] head degradation a few months sooner than the March 2002 discovery by the licensee." As you are aware, there is an ongoing investigation by the Department of Justice regarding the completeness and accuracy of information that FirstEnergy provided to the NRC on the condition of Davis-Besse.

The NRC is particularly concerned about the draft report's characterization of the NRC's use of risk estimates. The statement in the report that the NRC's "estimate of risk exceeded the risk

levels generally accepted by the agency” is not factually correct. NRC officials pointed out to GAO and GAO’s consultants, both in interviews and in written responses to GAO questions, that our estimate of delta core damage frequency was 5×10^{-6} per reactor year, not 5×10^{-5} per reactor year as indicated in the report. In fact, the NRC staff safety evaluation (attached to a December 3, 2002, letter to FirstEnergy) stated that the change in core damage frequency due to the potential for control rod drive mechanism nozzle ejection was consistent with the guidelines of Regulatory Guide 1.174, “An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.” The enclosure to this letter provides detailed comments on issues of correctness and clarity in the report, many of which are related to the NRC’s estimate of risk at Davis-Besse.

We disagree with the finding that the NRC does not have specific guidance for deciding on plant shutdowns and with the report’s related recommendation identifying the need for NRC to develop specific guidance and a well-defined process for deciding when to shut down a nuclear power plant. We believe our regulations, guidance, and processes that cover whether and when to shut down a plant are robust and do, in fact, provide sufficient guidance in the vast majority of situations. Plant technical specifications, as well as many other NRC requirements and processes, provide a spectrum of conditions under which plant shutdown would be required. Plants have shut down numerous times in the past in accordance with NRC requirements. From time to time, however, a unique situation may present itself wherein sufficient information may not exist or the information available may not be sufficiently clear to apply existing rules and regulations definitively. In these unique instances, the NRC’s most senior managers, after consultation with staff experts and given all of the information available at the time, will decide whether or not to require a plant shutdown. Risk information is used in accordance with Regulatory Guide 1.174. This process considers deterministic factors as well as probabilistic factors (i.e., risk information). We regard the combined use of deterministic and probabilistic factors to be a strength of our decision-making process.

Another issue identified in the draft report as a systemic weakness is that the NRC has not proposed specific actions to address a licensee’s commitment to safety, also known as safety culture. We disagree with the report’s recommendation that NRC should develop a methodology to assess licensees’ safety culture that includes indicators of and/or information on patterns of licensee behavior, as well as on licensee organizational structures and processes. To date, the Commission has specifically decided not to conduct direct evaluations or inspections of safety culture as a routine part of assessing licensee performance due to the subjective nature of such evaluations. As regulators, we are not charged with managing our licensees’ facilities. Direct involvement with safety culture, organizational structure, and processes crosses over to a management function. The NRC does conduct a number of assessments that adequately evaluate how effectively licensees are managing safety. These include an inspection procedure for assessing licensees’ employee concerns programs, the NRC allegation program, enforcement of employee protection regulations, and safety-conscious work environment assessments during problem identification and resolution (PI&R) inspections. In addition, the NRC’s LLTF made several recommendations (which are being addressed) to enhance the NRC’s capability in this area. The NRC does not assess, nor does it plan to assess, licensee management competence, capability, or optimal organizational structure as part of safety culture.

While there are a number of factual errors in the draft report, as noted in the enclosure, we agree with many of the findings in the draft report. Most of GAO's findings are similar to the findings of the NRC's Davis-Besse LLTF. The NRC staff has made significant progress in implementing actions recommended by the LLTF and expects to complete implementation of more than 70 percent of them, on a prioritized basis, by the end of calendar year 2004. Reports tracking the status of these actions are provided to the Commission semiannually and will continue until all items are completed, at which time a final summary report will be issued.

I have enclosed the NRC's detailed comments on the draft report. If you have any questions, please contact Stacey L. Rosenberg, of my staff, at (301) 415-3868.

Sincerely,

(RA Luis A. Reyes for)

William D. Travers
Executive Director
for Operations

Enclosures:

1. NRC Comments on GAO Draft Report on Davis-Besse
2. Memorandum from EDO to OIG dated April 19, 2004

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