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From:
Tom Gurdziel

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To:
Chairman Diaz

*** YELLOW ***

For Signature of:

Routing:
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Description:
Concerns April 22, 2004 ltr to Mr. James Riccio, Director's Decision-04-01

Assigned To:
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MARSH, LEDYARD (TAD) E

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Brain Sheen / SHOULD WE RESPOND?

PAPER NUMBER: LTR-04-0316

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ACTION OFFICE: EDO

*To: Dyer, NRR
Ref. G 20030508*

AUTHOR: Tom Gurdziel

*Cys: EDO
DEDMRS
DEDH
DEDM
AO
DEDR*

AFFILIATION: NY

ADDRESSEE: Nils Diaz

SUBJECT: Concerns April 22, 2004 ltr to Mr. James Riccio / Director's Decision -04-01

ACTION: Appropriate

DISTRIBUTION: Chairman, Comrs

LETTER DATE: 05/02/2004

ACKNOWLEDGED: No

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DATE DUE:

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~~Handwritten scribble~~

Pls yr to DLP -

Toed - I think a response is appropriate, since we need to clarify the intent of the 2.206 response. The 2.206 asked us to enforce against commitments - Our Proposed DD was that we don't enforce against commitments - However, we need to explain that if the commitment was deemed necessary to comply with the regulations, we enforce against not meeting the regulations -

Brain

9 Twin Orchard Drive
Oswego, NY 13126
May 2, 2004

Chairman Nils J. Diaz
US Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Nils J. Diaz,

I am taking this time to tell you of my opinions on the April 22, 2004 letter to Mr. James P. Riccio and what I believe is described as a Director's Decision (DD-04-01) providing staff's conclusions.

Let me start with the second paragraph on page 2 of the letter to Mr. Riccio.

"With respect to the first request for enforcement action, the NRC staff finds that the Petitioners' request for enforcement based solely on failure of the licensee to complete commitments represents a misinterpretation of the agency's enforcement policies regarding commitments."

I feel that this is a slick piece of misdirection. The first point of the petitioners appears to be that many obligations dating from October 1996 have still not been met. The staff response does not address these concerns. Instead, it calls these obligations commitments, then provides an excuse for not needing to address "commitments". (When done by Davis-Besse prior to their lengthy outage, this type of argument was called "justification" and was used to avoid taking any action that cost money.)

"Reasonable assurance of adequate protection of public health and safety is, as a general matter, defined by the Commission's health and safety regulations themselves." This confidence building sentence is, in my opinion, unfortunately misleading since it ignores the requirement that the regulations actually be observed. (However, I will admit, it does stand alone simply as a definition.) (For example, at Davis-Besse, the requirement to completely clean the upper reactor head to look for all results of the then-accepted "gasket or flange leakage" was apparently ignored for years. And, if you have read, I believe, the Lessons Learned report, you would have found out that FirstEnergy/Davis-Besse removed a qualified boric acid inspector, (Andrew S.), and replaced him with a person who was not qualified as a boric acid inspector but yet signed off on it, THEN was qualified (at a later date.)

From the bottom paragraph of the same page:

"Any additional enforcement actions, as requested by the Petitioners, would not increase this level of staff oversight, which is directed at assuring that the plant is capable of safe operation in accordance with the Commission's rules and regulations." Here again, the problem is sidestepped, in my opinion. The request is to punish the plant operator for not

doing what they should have done in the past. The NRC response here is to disregard that request and, instead, look to actions from the present "going forward."

From page 8:

First off, I notice that words are provided at the top of this page to acknowledge that "the applicant or licensee demonstrates compliance" in order to reasonably assure adequate protection of public health and safety.

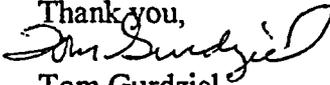
In that same paragraph:

"The regulations were established using defense-in-depth principles and conservative practices which provide a degree of margin to unsafe levels. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid."

I believe these sentences need correction to read:

"The regulations were established using defense-in-depth principles and conservative practices which provided a degree of margin to unsafe levels before diluting them with the risk-informed philosophy."

I need no response.

Thank you,

Tom Gurdziel

Copy:

Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield
Inspector General Hubert T. Bell