

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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June 15, 2004 (7:15AM)

Before Commissioners:
Nils J Diaz, Ph.D., Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
FirstEnergy Nuclear Operating Co.) Docket No. 50-346-CO
Davis-Besse Nuclear Power Station, Unit 1) June 14, 2004

PETITIONERS' APPEAL OF ASLB ORDER DENYING INTERVENTION

Now come Michael Keegan, Donna Lueke, Joanne DiRando, and Nuclear Information and Resource Service (by Paul Gunter), Petitioners herein, by and through counsel, and appeal to the full Commission the determination rendered June 2, 2004 which denied intervention to Petitioners in opposition to the March 8, 2004 confirmatory order.

BACKGROUND

FENOC owns and operates Davis-Besse Unit 1, a nuclear power station located in Ottawa County, Ohio. On March 6, 2002, during a routine refueling outage, FENOC discovered that cracks in a nozzle that penetrates the reactor pressure vessel ("RPV") head had caused reactor coolant containing boric acid to leak onto the RPV head over a very long time. This long-term leakage had, in turn, created a cavity in the RPV head. See 69 Fed. Reg. 12,357, 12,357 (Mar. 16, 2004). The NRC staff subsequently determined that the leak was caused, among other things, by FENOC's failure properly to implement boric acid corrosion control and corrective action programs. See id.

Because of the safety significance of the performance deficiencies, a number of corrective actions were taken by FENOC and

the staff before the plant was permitted to restart. In this regard, the staff issued a March 13, 2002 confirmatory action letter (CAL) that detailed actions FENOC had to implement before the plant could reopen. Also, beginning in May 2002 the staff put in place an oversight ("0350") panel to provide enhanced facility monitoring during shutdown and during and after any future restart until a determination was made that a return to normal NRC facility oversight was warranted.

FENOC developed and submitted a May 21, 2002 return-to-service plan that described FENOC's actions for a safe and reliable return to service, while on August 16, 2002 the staff oversight panel established a restart checklist outlining the essential issues necessary to resolve the causes of the RPV head degradation so that FENOC could safely restart and operate the facility. Further, on November 23, 2003, FENOC submitted an operational improvement plan intended to ensure that implemented improvements continued after the plant reopened, including requiring that FENOC conduct regular refueling outage inspections for leakage from or above the RPV head. See id. at 12,358-59.

In issuing the March 8, 2004 confirmatory order at issue in this proceeding, the staff declared that, notwithstanding the corrective actions taken by FENOC to address the staff's CAL and restart checklist and the actions that are planned by FENOC in its operational improvement plan, additional measures are necessary to improve FENOC's ability to self-assess plant problems, which the staff denoted as an essential element in preventing a recurrence of a safety-related event

such as the RPV head degradation incident. To this end, that order modifies the FENOC operating license for Davis-Besse to require two additional actions. First, FENOC must obtain comprehensive independent outside assessments of the facility's operational performance, organizational safety culture (including safety-conscious work environment), corrective action program implementation, and engineering program effectiveness. Second, FENOC must conduct a visual examination of the RPV upper head during the next (Cycle 14) midcycle outage and report the results to the staff before restart from the outage. See id. at 12,359-60. With this immediately effective confirmatory order in place, the staff approved the restart of Davis-Besse on March 8, 2004.

The March 8 confirmatory order states that "[a]ny person adversely affected by this [order], other than the licensee, may request a hearing within 20 days of its issuance." *Id.* at 12,360. The order also declares that "[i]f a hearing is held, the issue to be considered at such a hearing shall be whether this Confirmatory Order should be sustained." *Id.* Pursuant to the order, on March 29, 2004, the Petitioners filed a hearing request, embodied in their "Objections to Confirmatory Order Modifying License" (Mar. 29, 2004). In their intervention request, the Petitioners ask that the agency (1) hold an evidentiary hearing on fire-protection issues; (2) suspend FENOC 's 10 C.F.R. Part 50 operating license and halt the restart of Davis-Besse because of the NRC's alleged "regulatory indifference"; and (3) require FENOC to satisfy all licensing criteria before allowing the commercial generation of electricity at Davis-Besse. See "Objections"

at 3-11.

Both FENOC and the staff filed responses asserting the hearing request should be denied. See "[FENOC] Answer to Objections to Confirmatory Order and Request for Hearing" (Apr. 23, 2004) at 1-2; "NRC Staff Response to Objections to Confirmatory Order Modifying License" (Apr. 23, 2004) at 1. Subsequently, the Petitioners filed additional declarations in support of their standing claims, see "Notice of Filing of Declarations in Support of Petitioners' Standing to Sue" (Apr. 29, 2004) [hereinafter Support Declarations], and Petitioners' reply to the NRC and FENOC answers, "Petitioners' Combined Reply in Opposition to 'NRC Staff Response to Objections' and FENOC's 'Answer to Objections'" (May 13, 2004).

On June 2, 2004, the Atomic Safety and Licensing Board issued a "Memorandum and Order" by which it denied Petitioners' request for a hearing for having "sought to litigate matters that fall outside the scope of this proceeding." LBP-04-11.¹ It is from this ruling of the ASLB that Petitioners take their appeal.

**THE SCOPE OF THE CONFIRMATORY ORDER
IS FAR BROADER THAN ASSERTED BY THE LICENSING BOARD**

1. Fire Protection

The Atomic Safety and Licensing Board utilized a constrained view of the scope of the March 8 confirmatory order, and based upon that narrow interpretation, proceeded to find that the Petitioners had not

¹ Citing as authority for its holding (at 4-5) *Bellotti v. NRC*, 725 F.2d 1380, 1381 (D.C. Cir. 1983), aff'g, *Boston Edison Co. (Pilgrim Nuclear Power Station)*, CLI-82-16, 16 NRC 44 (1982); *Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station)*, CLI-04-05, 59 NRC 52, 56 (2004); *Public Serv. Co. of Indiana (Marble Hill Nuclear Generation Station, Units 1 and 2)*, CLI-80-10, 11 NRC 438, 441-42 (1980).

proffered any admissible contentions. The Board found that the NRC staff had ordered FENOC to obtain comprehensive independent outside assessments of the facility's operational performance, organizational safety culture (including safety-conscious work environment), corrective action program implementation, and engineering program effectiveness; and that FENOC must conduct a visual examination of the RPV upper head during the next midcycle outage.

Petitioners respond that the Davis-Besse "0350" Oversight Panel clearly implicated at least two of their contentions in the return-to-service process: fire safety was a restart issue, and root cause analysis was a focal element of the Panel's oversight mission.

NIRS directly requested the Davis-Besse Oversight Panel by letter dated December 29, 2003 to investigate the matter of alleged *de facto*, unlicensed "operator manual actions" being implemented to replace physical fire suppression measures. John Grobe, Chairman of the Davis-Besse Oversight Panel, responded by letter of March 4, 2004, noting that the resolution of the "licensee's procedure for anticipated fires in the Davis-Besse control room and cable spreading room" was added to the Oversight Panel's review of the 0350 Restate Checklist item 5.b, "Systems Readiness for Restart." The Office of Nuclear Reactor Regulation provided its assessment of fire-readiness in a February 6, 2004 memo to Grobe, ADAMS Accession No. ML040490220.

Enclosure 2 to NRC EA-03-214, the March 8, 2004 "Approval to Restart the Davis-Besse Nuclear Power Station, Closure of Confirmatory Action Letter, and Issuance of Confirmatory Order" indeed contains a "Systems Readiness for Restart" section, the contents of which are

reproduced in the margin.² There is no mention of the fire protection plan analysis promised by Mr. Grobe, calling into question the completeness of the restart checklist and, as Petitioners proffered to the ASLB, the legality of Davis-Besse's very operating license.

FirstEnergy's serial noncompliance with the NRC's progressive discipline on fire safety through the decade of the 1990's stems from the very same corporate culture deficiencies that resulted in the corrosion debacle. The 0350 Panel's inclusion of the matter in its Restart Checklist lends the impression that fire safety properly should fall under the penumbra of concerns covered by the Order. Fire protection at Davis-Besse did not receive a complete and thorough review of identified violations of 10 CFR § 50.48, reflecting the continuation of a systemic failure on the part of the both the licensee and the NRC to redress long-standing violations that carry significant and undue adverse impact on the health and safety of the Petitioners. NRC regulation 10 CFR § 50.48 imposes upon licensees fire protection requirements in Appendix R III.G.2, specifying three

² "5.b Systems Readiness for Restart. Basis for Closure: The licensee established a System Health Assurance Plan which consisted of several reviews of each safety-related system to ensure that it was capable of meeting its design requirements and procedures for operation were adequate. The licensee completed activities under this plan to review systems' readiness for restart. The NRC conducted several inspections to assess the licensee's activities and obtain reasonable assurance that the safety-systems at the plant were capable of performing their design functions. The results of these inspections are documented in NRC Inspection Report Nos. 50-346/02-13 (ADAMS Accession No. ML030630314), 50-346/02-14 (ADAMS Accession No. ML030630314), 50-346/03-03 (ADAMS Accession No. ML032950012), 50-346/03-11 (ADAMS Accession No. ML040360097), 50-346/03-22 (ADAMS Accession No. ML033570081), and 50-346/03-24 (ADAMS Accession No. ML040060504), with additional information to be documented in NRC Inspection Report Nos. 50-346/03-10 and 50-346/04-04. Throughout the extended shutdown the NRC identified a number of discrepancies which affected past operability of safety systems. For conditions affecting operability, the NRC has confirmed that adequate corrective actions have been taken to restore the operability of those safety systems. Taken collectively, the results of NRC inspections and evaluations provide reasonable assurance that the licensee has taken appropriate actions to ensure that plant systems can perform their design basis functions and are ready to support safe restart and operation of Davis-Besse."

approved methods for protecting the reactor's safe shutdown power, instrumentation and control electrical cables so as to preserve the remote shutdown from the control room. The only approved methods are 1) separation of redundant systems with a passive fire barrier rated to withstand fire for at least three (3) hours; 2) separation of redundant systems by at least twenty (20) feet with no intervening combustibles and used in conjunction with smoke detectors and automated suppression and; 3) separation of redundant systems with a passive fire barrier rated to withstand fire for at least one (1) hour, used in conjunction with smoke detectors and automated suppression systems. Any other methods of fire suppression employed by a licensee require formal approval from the NRC through the exemption or deviation process.

Petitioners acknowledge that NRC has conducted several inspections during the reactor vessel head outage with a limited and selective focus on fire protection at Davis-Besse including Davis Besse nuclear power station NRC Integrated Inspection Reports 05346/02-19 [ML030310226], 05000346/2004006 [ML0412700700] and Report 05000346/2003018 [ML033080433] where "no findings of significance were identified." However, the Triennial Fire Protection Inspection scheduled for Davis-Besse in 2003 during the extended outage for the reactor pressure vessel head repair was cancelled and rescheduled to take place in the period August 30 - September 17, 2004, a fact not rebutted by FENOC or the staff. Triennial fire protection inspections have uncovered significant fire protection issues at other nuclear power stations. Davis-Besse - certainly the most dubious performer

since 2000 - has yet to have its first triennial inspection under the NRC's program, which commenced in 2000.

Petitioners point to NRC's "Special Inspection - System Health Assurance Followup," Report No. 0500346/2003003 (DRS) dated October 21, 2003, which identified that on September 9, 2003, NRC completed a special inspection of Davis-Besse Nuclear Power Station wherein actions to resolve restart checklist items were reviewed. That inspection focused on a review of activities associated with the discovery phase of the System Health Assurance Plan (SH-DAP-5A-01) and the subsequent program for Resolution of Open Design Questions. Since April 2002, Davis-Besse has been under the Inspection Manual Chapter 0350 process. The intent behind the System Health Assurance Plan (SHA) was to provide assurance that important plant systems were able to perform their safety functions and support station restart and operation. It was designated as one of seven building blocks identified in the licensee's Return-to-Service Plan following identification of severe degradation of the Reactor Vessel Head. The Plan consisted of three review programs: (1) an Operational Readiness Review; (2) a System Health Readiness Review (SHRR) and (3) a Latent Issue Review (LIR).

The aforementioned NRC Special Inspection dated October 21, 2003 revealed that during the three phase inspection "the collective reviews identified numerous discrepancies in five design-related programmatic areas (station flooding, high energy line break, environmental qualification, seismic qualification and Appendix R-Safe

Shutdown) within each of the five LIR systems."³ It is the referenced Appendix R, "Safe Shutdown Discrepancies," that is of concern to the Petitioners in this proceeding. FirstEnergy was to develop its Safety Function Validation Project (SFVP) to determine the extent of design basis calculation discrepancies in safety-related systems that were not subject to an LIR and to determine whether these systems could perform their accident mitigation functions. The Special Inspection Report notes, "The report specifically noted that there were other aspects of system design, maintenance, and operation that could affect the ability of the systems to perform their safety functions."⁴

The five design-related programmatic areas with the potential to affect systems beyond those examined in the LIR program included "Appendix R - Safe Shutdown"⁵ - plans to determine and address the extent of condition of each areas. In the Report at § b.4.5, Appendix R: Safe Shutdown CR 03-00179, it states:

The inspectors performed an independent review of safe shutdown capability to assess the quality of the Appendix R - Safe Shutdown Analysis, Collective Significance Review.

The Appendix R - Safe Shutdown CSR examined 281 CRs [Condition Reports] from 2002 through January 2003. Each CR was evaluated and assigned to one of six categories: . . . Fire Protection features.

The Appendix R - Safe Shutdown CSR identified issues in all six areas, the most significant being related to lack of documented basis to support evaluations in the Fire Hazards Analysis Report . . . and safe shutdown procedure deficiencies.⁶

It was the NRC staff which identified "lack of a documented basis to support evaluations in the Fire Hazard Analysis Report" (FHAR) and

³ NRC Special Inspection-System Health Assurance Follow-up Report No. 0500346/2003003 (DRS), October 21, 2003 [ML032950012] page 3.

⁴ *Id.* p. 3.

⁵ *Id.*, pp. 15-16.

⁶ *Id.*, p. 21.

the identified "safe shutdown procedure deficiencies" for Davis-Besse nuclear generating station. During the April 21-25, 2003 fire protection review of Davis-Besse, the NRC's staff identified the "Safety Evaluation of Fire Protection Measures At the Davis-Besse Nuclear Power Station, Unit 1," per Appendix R to 10 CFR 50, dated May 30, 1991. Moreover, Petitioners brought to the ASLB's attention a June 24, 2003 email from NRC Headquarters senior fire protection engineer Phil Qualls to Dennis Kubicki, former NRC fire protection engineer and technical reviewer of the 1991 SER. Qualls confirmed the presence of several significant safety-related fire protection deficiencies and non-compliances when he stated, "A Region III inspection recently found a SER dated May 31, 1991 which approves some pretty outrageous stuff" including complete operator manual actions in lieu of compliance with 10 CFR 50 Appendix R III.G.2 and "a variety of fire protection issues."⁷ Mr. Qualls further commented in the email, "There is no license amendment or exemption granted with the SER (some apparent disconnect there too)."⁸

As identified in NRC SECY-03-100 "Rulemaking Plan for Post-Fire Operator Manual Actions" dated June 17, 2003:

The staff sought the advice of the Office of General Counsel [OGC] as to whether Appendix R, § III.G.2 permits licensees to rely on operator manual actions in lieu of fire barriers. OGC advised staff that the regulation cannot be reasonably interpreted to permit reliance upon operator manual actions with respect to redundant safe shutdown. Therefore, any pre-1979 licensee that is using operator manual actions in lieu of fire barrier separation without an NRC-approved exemption is not in

⁷ FOIA 2003-0358 Appendix N-19, email from Phil Qualls, US NRC, to Dennis Kubicki, US DOE, June 24, 2003.

⁸ *Id.*

compliance with the regulations."⁹

FENOC has submitted neither a license amendment nor exemption request for its non-compliant and illegal operator manual actions in lieu of the requirements of Appendix R § III.G.2 for the years 2004 and 2003. The Petitioners are aware *only after undertaking their own investigation* of FirstEnergy's exemption request from 10 CFR 50 § III.G. 3, to the extent that it requires fixed fire suppression and detection for Fire Area HH in Davis-Besse for which alternate shutdown capability is provided for Control Room Emergency Ventilation System circuits [ML040220470].¹⁰ So far as Petitioners understand, however, the exemption request submittal has never been published in the Federal Register. This, Petitioners suggest, is a violation of NRC regulations.

The fire protection issue - one that was purportedly included by the NRC staff in its restart checklist - was inexplicably not listed or referenced in the March 8, 2004 NRC letter. How could this issue, acknowledged by a top NRC professional to comprise a *de facto* license amendment, lie beyond the scope of the restart order for Davis-Besse? When regulatory experts say that the use of 13-year-old "complete operator manual actions [*in lieu* of barriers per § III.G.2] "without license amendments or exemptions granted" is "pretty outrageous stuff", how is it that the public has no due process avenue of recourse? There is a grave difference between John Grobe's bland

⁹ "Rulemaking Plan for Post Fire Operator Manual Actions," SECY-03-100, U.S. Nuclear Regulatory Commission, June 17, 2003, p.3.

¹⁰ "Request for Exemption from 10 CFR 50 Appendix R Section III.G.3 for Fire Area HH," FENOC, January 20, 2004, ADAMS Access No. ML040220470.

assurances about fire protection, and the observation of one of his underlings who may know better. .

Where an intervenor includes in a safety contention that an applicant is not complying with a specified regulation, or alleges with particularity the existence and detail of a substantial safety issue on which the regulations are silent, there is an admissible contention. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982), citing 10 CFR § 2.758. Serious violations or other incidents may form the basis for a contention challenging the adequacy of management of a facility. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 297 (1995).

Moreover, an alleged injury to a purely legal interest is sufficient to support standing. Thus, a petitioner derived standing by alleging that a proposed license amendment would deprive it of the right to notice and opportunity for hearing provided by § 189a of the Atomic Energy Act. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-90-15, 31 NRC 501, 506 (1990), reconsidered, LBP-90-25, 32 NRC 21 (1990).

**2. Root Cause Analysis Significantly Affects Safety
And Remains Incomplete**

The Confirmatory Order documents include root cause analysis within their scope - as an item which as yet remains open:

[T]he probable cause of the degradation was primary water stress corrosion cracking of the nozzle. The physical factors that caused corrosion of the RPV head were the CRDM nozzle leakage associated with through-wall cracking, followed by boric acid corrosion of the RPV low-alloy steel. The Licensee further concluded that the large-scale corrosion occurred as a result of a failure to detect and arrest the leakage until advanced

symptoms had appeared.

On March 4, 2004 the NRC asked FENOC several "root cause" questions concerning a vent line problem unique to Davis-Besse which potentially could cause "cracking of nearby nozzles . . . [and] . . . could impact the cracking assumptions for the new RPV head."¹¹ This betrayed the staff's, not to mention FENOC's, continuing lack of complete understanding about the chain of events, miscellaneous mistakes, sloppy decisions and possibly deliberate coverups created the recent disastrous history of Davis-Besse.

If the public may not object at the point of the confirmatory/restart orders to the NRC's omission to include safety-related matters before the plant is allowed to move to full power, when may it? The very fact the staff continues to question the root cause proves that the root cause investigation is not completed, and that safety concerns remain open.

3. Lack of Enforcement Action In the Face of Evidence of Misconduct

The Petitioners raised in their "Combined Reply" new information suggesting interference by the staff with the ongoing Department of Justice inquiry.

In the "Oversight Panel Restart Action Matrix Closures - Concerns" (ADAMS Accession No. ML040820928) at RAM Item No. C-01, the 0350 Panel discusses the completeness and accuracy of FirstEnergy's response to Generic Letter 97-01, "Degradation of CRDM/CEDM Nozzle and Other Vessel Closure Head Penetrations." FirstEnergy (by Toledo

¹¹Letter, Jon B. Hopkins, (NRC) to Lew W. Myers (FENOC), "Request for Additional Information Re: Root Cause Analysis", Accession No.ML0406404.

Edison) formally endorsed "B&WOG integrated response to Generic Letter 97-01: Degradation of CRDM/CEDM Nozzle and Other Vessel Closure Head Penetrations." The Topical Report provided the justification and schedule for an integrated vessel head penetration inspection program for all B&W Owners' Group plants. The Report determined that Davis-Besse was not considered at significant risk to require inspections of the reactor vessel nozzles from beneath the head in the near term (1998- 2000), but did require Davis-Besse to continue to comply with 10 CFR § 50.55a and Appendix A General Design Criterion 14, which required visual inspections to be performed on the reactor head and further, mandated inspections of the required number of control rod housings during each inspection interval per ASME Code requirements, during each refueling outage. This apparently did not occur at Davis-Besse.

FENOC responded through the B&WOG to a Request for Additional Information (RAI) and the NRC approved FENOC's response to the generic letter in a letter dated November 29, 1999, which stated the integrated program provides an acceptable basis for evaluating VHPs based on FENOC's having endorsed the NEI Submittal of December 11, 1998, (integrated response to RAI) and indicated its participation in the NEI/B& WOG integrated program.

NEI 99-04, "Guidelines for Managing NRC Commitment Changes, defined "Regulatory Commitment" as "an explicit statement to take a specific action agreed to, or volunteered by, a licensee and submitted in writing on the docket to the NRC." In addition, the guidance states "A Regulatory Commitment is an intentional undertaking by a licensee

to ... (2) complete a specific action to address an NRC issue or concern (e.g., generic letter, bulletin, order, etc.)." In this matter, the Generic Letter became part of Davis-Besse's licensing basis.

But staff at FirstEnergy maintained to the NRC on August 15, 2002 that the utility failed to recognize that its response to Generic Letter 97-01 and also Generic Letter 88-05 on the Boric Acid Control Program were licensing commitments. Hence the licensee did not recognize the commitments made to these generic letters were regulatory commitments and did not control them as such, and the required inspections were not performed. This nearly-catastrophic failure to distinguish important safety-related inspection commitments from mere bureaucratic proprieties raises disturbing questions about FENOC's staff competence, quality assurance, managerial vigilance and credibility. Yet the NRC staff, based solely on a review of transcripts of that August 15, 2002 meeting, concluded there were no false statements and that the utility's failure to be able to distinguish a licensing commitment was unintentional.

Since the item was then classified as "closed," it appears not to have been referred to the Justice Department for purposes of the grand jury inquest which ostensibly is presently under way. And the staff finding tends to exculpate FirstEnergy without being considered as part of the larger picture which the grand jury presumably has been asked to consider.

Moreover, there "0350" Panel apparently took no note as it closed this item of the February 2003 whistleblower allegation of Andrew

Siemaszko, former nuclear systems engineer for a FirstEnergy subsidiary. Siemaszko asserts that he obtained company photographs dating to April 1998 which depict a "lavalike flow of boric acid" leaking from the reactor head's weep holes. "Engineer Says Utility Ignored Rust; Fired Employee Files Whistleblower Papers," Toledo Blade,

<http://www.ohiocitizen.org/campaigns/electric/2003/nuc2003a.html>.

While FENOC responded to Siemaszko's allegation by smearing his credibility on the boric acid leakage, published reports state that a company newsletter lauded him for his efforts following the refueling outage at Davis-Besse in 2000. "Treatment of Ex-Nuclear Plant Staffer Questioned," Toledo Blade,

<http://www.toledoblade.com/apps/pbcs.dll/article?Date=20030429&Category=NEWS17&ArtNo=104290089&SectionCat=&Template=printpicart>. And the "0350" Panel has not investigated Siemaszko's allegation that he proposed to FirstEnergy in August 2001 that the utility buy the Midland reactor head. This allegation contradicts published reports that FENOC made inquired about the purchase in December 2001 - after negotiating 75 days of extra operation with the staff - whereas evidence of purchase of the head in August 2001 would tend to potentially criminal knowledge of the corrosion problem before FENOC had commenced negotiations with the NRC staff.

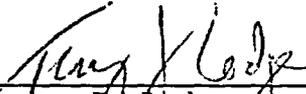
"Information provided to the Commission by . . . a licensee or information required by statute or by the Commission's regulation, orders, or the licensee shall be complete and accurate in all material respects. 10 CFR § 50.9(a) [52 FR 49372, Dec.31, 1987].

It may be that the Oversight Panel failed to discharge its responsibility to turn potentially civilly or criminally-incriminating information to the NRC Office of Investigations to be forwarded to the Department of Justice per the Memorandum of Understanding between the two agencies.

CONCLUSION

If the public cannot complain at this procedural juncture, and be heard by the regulators, then when?

Petitioners respectfully request that the ASLB order be reversed and their issues be remanded for hearing.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PETITIONERS' APPEAL OF ASLB ORDER DENYING INTERVENTION were served upon the following persons via deposit of paper copies in the U.S. first-class mail as indicated by an asterisk (*), and via electronic mail as indicated by a double asterisk (**):

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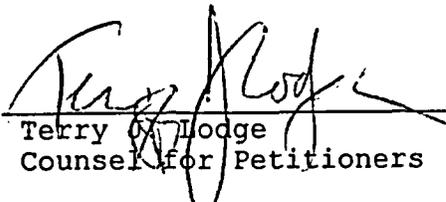
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