

May 5, 2005

EA-04-231
EA-04-232

Mr. Mark B. Bezilla
Vice President-Nuclear, Davis-Besse
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2
Oak Harbor, OH 43449-9760

SUBJECT: DAVIS-BESSE NUCLEAR POWER STATION
FINAL SIGNIFICANCE DETERMINATION FOR A WHITE FINDING
AND NOTICE OF VIOLATION (NRC INSPECTION REPORT
NO. 05000346/2005010(DRS)

Dear Mr. Bezilla:

The purpose of this letter is to provide you with the final results of our significance determination of the preliminary White finding identified in Inspection Report No. 05000346/2004018(DRS). The inspection finding was assessed using the Significance Determination Process (SDP) and was preliminarily characterized as White (i.e., a finding with low to moderate increased importance to safety, which may require additional NRC inspections) because it was associated with a failure to implement a risk significant planning standard (RSPS). This preliminary White finding concerned the failure of the emergency planning zone (EPZ) sirens identified on May 7, 2004.

The preliminary White finding was associated with the Ottawa County Sheriff's Office loss of its capability to activate 49 EPZ sirens, located in Ottawa County, between April 27 and May 7, 2004, and potential vulnerability to unknowingly lose its capability to activate the 49 EPZ sirens located in Ottawa County for approximately 30 days prior to a routine Alert and Notification System (ANS) test conducted on May 7, 2004. The preliminary White finding was also associated with an apparent violation of 10 CFR 50.47(b)(5), "Emergency Plans."

In our letter to you dated January 13, 2005, transmitting the inspection report and preliminary significance determination, we provided FirstEnergy Nuclear Operating Company (FENOC) an opportunity to request a Regulatory Conference or provide a written response. You declined the opportunity to discuss this issue in a Regulatory Conference and instead, on February 14, 2005, provided a written response. A copy of the your written response to the NRC has been entered in the NRC's document system (ADAMS) and is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, ADAMS Accession Number ML050470307.

In your letter, you disagreed with the NRC's application of the SDP and preliminary significance assessment of the finding, and provided information that you requested the NRC use in a re-evaluation of the finding. Specifically, you indicated that the significance of the finding

should be assessed assuming the sirens were unavailable for only 10 days and with consideration that an alternate method was available to notify the public of an emergency. You also disagreed with our statement that you had several opportunities to correct the ANS performance indicator (PI) data prior to submitting the data to the NRC, including information provided to you by the NRC. Finally, you noted that the apparent violation associated with the submittal of the incorrect ANS PI data appeared to be consistent with the Severity Level IV violation examples included in the NRC's Enforcement Policy.

With regard to the length of time the sirens were unavailable, we re-examined the inspection results and concluded that the county officials lost the capability to activate all 49 Ottawa County EPZ sirens for approximately 10 days. In addition, we determined that the potential existed for the county officials to lose the capability to activate the 49 Ottawa County EPZ sirens for approximately 30 days. Since the ANS is designed to permit the county officials to activate the system, we determined that a loss of this capability would constitute a failure versus a degradation of the system. In addition, we concluded that the system should be considered degraded for that period of time when the potential existed for the system to be made inoperable due to a design flaw and a deficiency in the maintenance program. Therefore, we determined that the county officials' inability to activate the 49 Ottawa County EPZ sirens for 10 days and potential loss of its capability to activate the 49 Ottawa County EPZ sirens for 30 days, was appropriately considered to be a degradation of the Risk-Significant Planning Standard and was properly characterized as a White finding.

During our initial significance assessment of the finding, we did not specifically consider the availability of route alerting as an alternate method for public notification during an emergency. However, we note that the SDP already includes consideration of the presence of an alternate notification system. As a result, we concluded that a re-assessment of the significance of the finding, considering the availability of an alternate public notification method, was not necessary. We also determined that, had route alerting not been available, the finding may have been characterized as being greater than a White finding.

With regard to the statements in our January 2005 letter associated with your submittal of incorrect ANS PI data, we reviewed the information you provided in your response and determined that sufficient information was available to your staff, prior to your submittal of the discrepant ANS PI data, to indicate that the additional silent tests of the EPZ sirens should not have been included in the ANS PI data. Specifically, we determined that Nuclear Energy Institute (NEI) publication NEI 99-02, "Regulatory Assessment Performance Indicator Guideline," an NRC-endorsed document issued in November 2001, provided clear guidance which would preclude inclusion of the silent tests of the EPZ sirens in the ANS PI data. The NRC also raised questions regarding the validity of your changing the testing methodology, in the middle of a testing period, and the need for Federal Emergency Management Agency (FEMA) approval for the methodology change. Although the NRC did not raise a specific concern regarding which equipment was used to conduct the silent tests of the EPZ sirens until after the ANS PI data were submitted in July 2004, we determined that sufficient guidance was available and questions were raised regarding the revised methodology, which should have resulted in your staff determining that the silent tests of the EPZ siren tests should not be included in the ANS PI data.

After considering the information developed during the inspection and the additional information you provided in your February 14, 2005, letter, the NRC has concluded that the inspection finding associated with the degradation of the EPZ sirens is appropriately characterized as White (i.e., an issue with low to moderate increased importance to safety, which may require additional NRC inspections).

You have 30 calendar days from the date of this letter to appeal the staff's determination of significance for the identified White finding. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.

The NRC has also determined that the failure to ensure the means to provide early notification and clear instruction to the populace within the plume exposure pathway EPZ is a violation of 10 CFR 50.47(b)(5), as cited in the enclosed Notice of Violation (Notice). The circumstances surrounding the violation are described in detail in the subject inspection report. In accordance with the NRC Enforcement Policy, the Notice of Violation is considered an escalated enforcement action because it is associated with a White finding.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response.

Finally, in your February 14, 2005, letter, you agreed that the 10 CFR 50.9(a) violation of the Commission's regulations, documented in our January 2005 letter to you and associated with the submittal of discrepant ANS PI data for the second and third calendar quarters of 2004, was appropriately characterized as a Severity Level IV violation in accordance with the NRC's Enforcement Policy. On November 4, 2004, you submitted a letter to the NRC correcting the performance indicator data.

Based on the results of this inspection, we have determined that your submittal of discrepant ANS PI data for the second and third quarters of 2004 is a Severity Level IV violation of 10 CFR 50.9, "Completeness and Accuracy of Information." You documented the NRC's concerns regarding your submittal of the ANS PI data in your corrective action program as Condition Report 04-06632, the violation was not willful, and compliance was restored within a reasonable period of time. Therefore, this violation is being treated as a Non-Cited Violation (NCV), consistent with Section VI.A of the Enforcement Policy. The NCV was described as Apparent Violation 05000346/2004018-01 in NRC Inspection Report No. 05000346/2004018(DRS). If you contest the violation or significance of the NCV, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with copies to the Regional Administrator, Region III, the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001, and the NRC Resident Inspector at the Davis-Besse facility (EA-04-232).

For the entire inspection period, the Davis-Besse Nuclear Power Station was under the Inspection Manual Chapter (IMC) 0350 Process. The Davis-Besse Oversight Panel assessed the inspection findings and other performance data to determine the required level and focus of

followup inspection activities and any other appropriate regulatory actions. Even though the Reactor Oversight Process had been suspended at the Davis-Besse Nuclear Power Station, it was used as guidance for inspection activities and to assess findings. Accordingly, we will use the NRC Action Matrix, in accordance with IMC 0305, to determine the most appropriate NRC response for this event. We will notify you, by separate correspondence, of that determination.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA by Mark Satorius Acting for/

James L. Caldwell
Regional Administrator

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

Enclosure: Notice of Violation

cc w/encl: The Honorable Dennis Kucinich
G. Leidich, President - FENOC
J. Hagan, Senior Vice President
Engineering and Services, FENOC
L. Myers, Chief Operating Officer, FENOC
Plant Manager
Manager - Regulatory Compliance
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
J. Papcun, President, Ottawa County Board of Commissioners
W. King, Federal Emergency Management Agency, Region V

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Sincerely,
/RA by Mark Satorius Acting for/
 James L. Caldwell
 Regional Administrator

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 Engineering and Services, FENOC
 L. Myers, Chief Operating Officer, FENOC
 Plant Manager
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 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
 J. Papcun, President, Ottawa County Board of Commissioners
 W. King, Federal Emergency Management Agency, Region V

***See Previous Concurrence**

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DATE	04/26/05	5/4/05	5/5/05	5/5/05	

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¹Concurrence received from Doug Starkey,OE, in E-mail 5/4/05.

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NOTICE OF VIOLATION

FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station

Docket No. 50-346
License No. NPF-3
EA-04-231

During an NRC inspection conducted between October 25 and October 29, 2004, at the Davis-Besse Nuclear Power Station, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 CFR 50.54(q) requires, in part, that a licensee authorized to operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in Section 50.47(b). Title 10 CFR 50.47(b)(5) requires, in part, the means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone (EPZ) have been established.

Section 7.7 of Revision 23 of the Davis-Besse Nuclear Power Station's emergency plan indicated that the EPZ "Prompt Notification System" implements the requirements of 10 CFR 50.47(b)(5). Section 7.7 states that the Alert and Notification System (ANS), consists of 54 sirens that were installed to provide an acoustic alerting signal for the residents and transients within the 10 mile radius of the Davis-Besse Station, and that the sounding of these sirens would alert the public to tune to local radio stations for Emergency Alert Station messages. The emergency plan also indicated that local officials would activate the sirens from the Ottawa County Sheriff's Office.

Contrary to the above, between April 27 and May 7, 2004, the FirstEnergy Nuclear Operating Company, a licensee authorized to operate the Davis-Besse Nuclear Power Station, failed to provide a means for early notification and clear instruction to the populace within the plume exposure pathway EPZ. Specifically, on April 6th, the time signature of the siren activation equipment, located in the Ottawa County Sheriff's Office, was not revised the following the change to daylight savings time. On April 26th, the licensee conducted a maintenance activity which incorrectly set the time signature of one siren to one hour ahead of the actual day light savings time. On April 27th, the licensee conducted a routine polling of all of the EPZ sirens which caused the time signatures of the remaining EPZ sirens to be set one hour ahead of the actual daylight savings time. The combination of these changes caused the time signatures of the activation equipment and the EPZ sirens to differ by more than the allowed 1.5 hours which blocked activation of the sirens. As a result, the Ottawa County Sheriff's Office could not activate the 49 EPZ sirens located in Ottawa County until May 7, 2004, when the combined results of these events were identified.

This violation is associated with a White Significance Determination Process finding.

Pursuant to the provisions of 10 CFR 2.201, FirstEnergy Nuclear Operating Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation";

EA-04-231," and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an Order 9 or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 5th day of May 2005