



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

July 15, 2005

EA-04-224

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: COMMITMENTS TO BE CONFIRMED BY ORDER MODIFYING LICENSE
(EFFECTIVELY IMMEDIATELY)**

Dear Mr. Bezilla:

The enclosed Confirmatory Order is being issued to FirstEnergy Nuclear Operating Company (FENOC) to confirm recent commitments made to the U.S. Nuclear Regulatory Commission (NRC). The commitments were made by FENOC as part of a settlement agreement between FENOC and the NRC concerning an apparent violation involving a former AVI assistant manager, a catering supervisor, and a catering/delivery employee who were threatened by AVI management with termination of employment for attempting to raise a fitness-for-duty (FFD) concern about an AVI cashier at Davis-Besse. The settlement agreement was discussed with your staff during an alternative dispute resolution (ADR) session held at Davis-Besse Nuclear Power Station in Oak Harbor, Ohio, on May 11, 2005. The elements of the settlement agreement formulated and agreed to at the mediation session were documented in a letter from you to the NRC dated June 15, 2005, and are also contained in Section V of the enclosed Order.

As part of the settlement agreement, FENOC agreed to provide safety conscious work environment training for contractor personnel who are granted unescorted access to Davis-Besse and the other FENOC nuclear facilities. In view of the Confirmatory Order, consent by FENOC thereto as evidenced by your signed "Consent and Hearing Waiver Form" (copy enclosed) dated July 6, 2005, and subject to the satisfactory completion of the conditions of the Confirmatory Order by FENOC, the NRC will not issue a Notice of Violation for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy. We will, however, evaluate the implementation of your commitments related to employee protection during future inspections.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

M. Bezillia

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Questions concerning this Confirmatory Order should be addressed to Russell Arrighi, NRC Office of Enforcement, who can be reached at 301-415-3936 or via e-mail at rja1@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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>. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement, then Significant Enforcement Actions**. To the extent possible, your response to this Confirmatory Order should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Michael R. Johnson, Director
Office of Enforcement

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

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated July 6, 2005

cc w/out 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

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OFFICE	OE:ES*		OGC*		OE:DD		OE:D	
NAME	RArrighi		SBrock		JLuehman		MJohnson	
DATE	7/07/05		7/08/05		7/12/05		7/14/05	

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Enclosure 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

FirstEnergy Nuclear Operating Company)	Docket No. 50-346
Davis-Besse Nuclear Power Station)	License No. NPF-3
5501 North State Route 2)	EA-04-224
Oak Harbor, OH 43449-9760)	

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

FirstEnergy Nuclear Operating Company (FENOC or Licensee) is the holder of Facility Operating License No. NPF-3 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 22, 1977. The license authorizes the operation of Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), in accordance with conditions specified therein. The facility is located on the Licensee's site in Ottawa County, Ohio.

II

On February 9, 2004, and July 8, 2004, the NRC's Office of Investigations (OI) began investigations to determine if former AVI Food Systems, Inc. (AVI) employees at Davis-Besse were the subject of employment discrimination in violation of 10 CFR 50.7. In OI Report Nos. 3-2004-006 and 3-2004-018, OI concluded that AVI employees were the subject of discrimination. By letter dated February 25, 2005, the NRC identified to the Licensee the NRC's concern and offered FENOC the opportunity to attend a predecisional enforcement conference or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and FENOC and, if

possible, assist the NRC and FENOC in reaching an agreement on resolving the concern. FENOC chose to participate in ADR. On May 11, 2005, the NRC and FENOC met at the Davis-Besse facility in Oak Harbor, Ohio in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As part of the ADR session, based upon the facts discussed during the mediation session and the commitments noted in Section IV below, the NRC will not issue a notice of violation for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.

III

By letter dated June 15, 2005, the Licensee stated that in addition to the actions already taken by FENOC to promote a safety conscious work environment (SCWE) at the FENOC nuclear facilities, the Licensee agreed to take certain additional corrective measures to emphasize the importance of a SCWE. The agreed-upon additional actions noted in Section IV of this Confirmatory Order focus on SCWE training for contractor personnel who are granted unescorted access to Davis-Besse and the other FENOC nuclear facilities.

On July 6, 2005, FENOC consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. The Licensee further agreed in its July 6, 2005, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through NRC's confirmation of the Licensee's commitments as outlined in this Order.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance. FENOC is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. NPF-3 IS MODIFIED AS FOLLOWS:

1. By no later than August 31, 2005, FENOC will provide contractors who are granted unescorted access to FENOC nuclear facilities with SCWE training that is equivalent to the SCWE training provided to FENOC employees as part of Plant Access Training.
2. By no later than August 31, 2005, FENOC will review the SCWE training module included in Plant Access Training and make any changes necessary to ensure that the module clearly reinforces that FENOC SCWE policies and NRC employee protection requirements (10 CFR 50.7) apply to all personnel working on behalf of FENOC, specifically including contractor employees, supervision, and management.
3. By no later than August 31, 2005, FENOC will provide specific training to the Davis-Besse food services contractor management and supervision involved in the

provision of services to FENOC on SCWE principles, FENOC SCWE policies, and NRC employee protection requirements (10 C.F.R. 50.7). This training will be comparable to the SCWE training that has been provided to FENOC management and supervision.

4. By no later than August 31, 2005, FENOC will include surveys of contractor personnel as part of the quarterly FENOC performance monitoring of SCWE at its nuclear facilities. These surveys are performed annually. Other data relied upon in the quarterly performance monitoring already includes the activities of contractor personnel in the calculation of the applicable performance measures.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and to the Licensee. Because of continuing disruptions in

delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael R. Johnson, Director
Office of Enforcement

Dated this 15th day of July 2005

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