

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

February 23, 2006 (5:10PM)

In the Matter of

Steven P. Moffitt

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IA-05-054

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RAS 11325

**STEVEN P. MOFFITT'S ANSWER TO AND REQUEST FOR EXPEDITED
HEARING ON ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.202(b) and the provisions of the January 4, 2006 "Order Prohibiting Involvement In NRC-Licensed Activities" (the Enforcement Order) issued by the U.S. Nuclear Regulatory Commission Staff (NRC Staff), Steven P. Moffitt hereby provides his Answer to the Enforcement Order and his request for a hearing on the Enforcement Order. Although Mr. Moffitt is filing his Answer now, he reserves the right to supplement or amend his Answer after he receives a copy of the OI report number 3-2002-006 issued on August 22, 2003, and documents supporting the Enforcement Order including the transcript of his NRC Office of Investigations (OI) interview on October 29, 2002. Although the documentation may contain information material to Mr. Moffitt's Answer, he is electing to file his Answer now to expedite the hearing process. Without a prompt review of the Enforcement Order, Mr. Moffitt's future employment opportunities will be placed in severe jeopardy because the Order immediately excludes him from employment in the nuclear industry for five years. Accordingly, pursuant to 10 C.F.R. § 2.202(c)(1), Mr. Moffitt requests an expedited hearing.

II. ANSWER TO THE ENFORCEMENT ORDER

The following Answer identifies and responds to each allegation or charge made in the Enforcement Order. To the extent the facts alleged are within Mr. Moffitt's personal knowledge, he affirmatively denies that they form the basis of a deliberate violation of 10 C.F.R. § 50.5(a)(2). As to facts alleged that are not within Mr. Moffitt's personal knowledge, he neither admits nor denies them, but leaves the NRC Staff to its burden of proof.

According to the Order, Mr. Moffitt acquired certain information between 2000 and 2001, about the condition of the Davis-Besse Nuclear Power Station (Davis-Besse) reactor pressure vessel (RPV) head and the quality of a 2000 RPV head inspection and cleaning. Purportedly, he then deliberately failed to ensure that information subsequently developed for and presented to the NRC during an October 3, 2001 telephone conference, an October 11, 2001 meeting, and an October 17, 2001 supplemental response to the Bulletin accurately reflected his prior knowledge.

As explained more fully below, Mr. Moffitt denies that he ever: (1) deliberately presented or allowed to be presented information to the NRC that was not complete and accurate in all material respects; or (2) deliberately withheld material information over the course of FENOC's response to the NRC's Bulletin. At all times, Mr. Moffitt acted in good faith to present the best information available; accordingly, he cannot be found in violation of 10 C.F.R. § 50.5(a)(2).

Because the Enforcement Order does not specifically recite each alleged violation, the following section indicates each salient allegation, followed by Mr. Moffitt's answer and reasons for denying the allegation. To the extent that any allegation in the Enforcement Order is not specifically addressed here, it is denied.

- A. Mr. Moffitt was not fully aware of the scope of the previous RPV head inspections and did not know that FENOC's responses to the Bulletin were incomplete and inaccurate.

1. Allegation:

Mr. Moffitt was aware of the scope of the previous RPV head inspections and the RPV head condition due to his official duties and communications he received, and he knew FENOC's responses to the Bulletin were incomplete and inaccurate. Specifically, Mr. Moffitt knew that: (a) the RPV head was not completely cleaned during 12RFO; (b) a June 27, 2001 memorandum stated that control rod drive mechanism (CRDM) flange leakage did not permit a detailed inspection in 12RFO; (c) an August 11, 2001 meeting revealed that "we can not clean our head thru [sic] the mouse holes"; (d) a July or August 2001 conversation stated boric acid was left on the RPV head, impeding a complete inspection; and (e) a September 14, 2001 letter noted that on completion of 12RFO, the RPV head had boric acid crystals of considerable depth and cleaning was not successful in removing all of the deposits.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reasons for Denial:

Contrary to the allegation, Mr. Moffitt was not fully aware of the scope of the previous RPV head inspections and the RPV head condition and, therefore, could not have known whether FENOC's responses to the Bulletin were incomplete and inaccurate. As explained below, Mr. Moffitt became aware of some of this information during 12RFO, but did not learn the full extent of the information until after the RPV head degradation was discovered in March 2002. At all times, Mr. Moffitt relied upon his subordinates with more detailed knowledge of the RPV head inspection history and details, and he had no basis to believe that information he received from them was incomplete and inaccurate. Mr. Moffitt, in turn, did not provide information that he believed was incomplete and inaccurate.

Mr. Moffitt was named Davis-Besse's Director of Technical Services just a few months prior to 12RFO and was assigned as a 12RFO shift director during his first refueling outage at Davis-Besse. During 12RFO he learned that several of the CRDM flanges were repaired and that Davis-Besse had a history of such flange leaks. He was aware that during 12RFO, System Engineer Andrew Siemaszko cleaned the RPV head with water to remove dried boron and that Mr. Siemaszko's efforts were considered successful, even though some boron remained on the top of the head. Nonetheless, Mr. Moffitt was not fully aware of the quantity or configuration of the boric acid deposits after the RPV head cleaning. Mr. Moffitt believed (as did the other personnel familiar with the conditions of Davis-Besse's RPV head) that the source of boric acid residue was leaking CRDM flanges.

At some point Mr. Moffitt learned that reactor coolant system (RCS) water that leaked from CRDM flanges immediately flashed to steam and deposited non-corrosive boric acid compounds on very hot components in the immediate area, particularly the RPV head. Mr. Moffitt knew of no one who believed that any boric acid left on the hot RPV head was a safety issue; Mr. Moffitt carried this good faith assumption into 2001.¹

During the Bulletin response period that began in August 2001, Mr. Moffitt was not warned by the FENOC engineers, the Framatome ANP experts he employed, or the NRC Staff about the possibility that dried boron on the RPV head could mask corrosion of the underlying metal. As NRC senior manager Jack Strosnider candidly stated during his OIG interview,

¹ "Information gained through interviews of the DBNPS and NRC staff indicated that a mind set had developed that boric acid corrosion on the RPV head would not result in significant wastage because of the elevated temperature of the RPV head, resulting in dry boric acid deposits." NRC Davis-Besse Reactor Vessel Head Degradation Lessons-Learned Task Force Report, at 25.

“corrosion ... was not something that anybody talked about ... there’s nobody sitting there saying, ‘[w]e ought to go forward with orders because I think there might be boric acid corrosion occurring on the head.’”²

Concerning the written and oral communications with which he is charged with knowledge, Mr. Moffitt denies that his receipt of Senior Design Engineer Praseon Goyal’s June 27, 2001 memorandum³ challenged his two, good-faith assumptions that: (1) the source of leakage onto the RPV head was due to historical problems with the CRDM flanges; and (2) boric acid left on the RPV head did not constitute a significant safety concern. Although Mr. Goyal summarized Davis-Besse’s 2000 RPV head inspection by noting that: (1) boron leakage from a CRDM flange was observed; (2) the leakage did not permit the detailed inspection of CRDM nozzles; (3) the flange was repaired; and (4) the RPV head was cleaned, he also noted that there was “no significant near-term impact on safety” even for plants that had not inspected “the RV head for leakage,” and concluded that this assumption enveloped Davis-Besse.⁴ The memorandum assured all recipients that there was no short-term safety issue associated with CRDM nozzle cracking.⁵

² Jack Strosnider, “Office of Investigations [sic] Interview,” August 22, 2002, at 30. Posted by the Union of Concerned Scientists at www.ucsusa.org/clean_energy/nuclear_safety/nrcs-inspector-general-documents-on-davisbesse.html. The names of the OIG interviewers were redacted.

³ Memorandum from P. Goyal, “Mode 5 Reactor Vessel Head Inspection Recommendation” (June 27, 2001). The Station Review Board approved the memorandum and its meeting minutes indicate that the Plant Manager, Site Vice President, the Nuclear Review Board, and the NRC resident inspector were copied on the minutes.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

Concerning the Order's allegation that Mr. Moffitt attended a Saturday, August 11, 2001 meeting during which Mr. Goyal allegedly stated that "we can not clean our head thru [sic] the mouse holes, and Andrew Siemaszko is requesting 3 large holes be cut in the Service Structure for viewing and cleaning," Mr. Moffitt does not recall attending the meeting.⁶ More importantly, he did not receive a copy of Mr. Goyal's August 11, 2001 e-mail memorandum and, therefore, never received Mr. Goyal's characterization of his purported statement. Mr. Moffitt has no recollection of Mr. Goyal or anyone else ever making such a statement to him, and he never became aware of this e-mail memorandum during the time of the Bulletin response.

Concerning Mr. Moffitt's receipt of a copy of a September 14, 2001 letter from Piedmont's Gregory Gibbs to the head of Davis-Besse's "CRDM Inspection and Repair Project," Mr. Moffitt does not recall reading Mr. Gibbs's letter in 2001. Mr. Moffitt was at the Institute of Nuclear Power Operations (INPO) in Atlanta the week of September 10, 2001;⁷ consequently, he was not available to review the copy of the letter purportedly sent to him. Because of Mr. Moffitt's limited availability during September 2001, he had retained Mr. Gibbs to assist the team responsible for planning the 2002 refueling outage. Mr. Moffitt has no recollection of speaking to Mr. Gibbs in 2001 about the contents of his letter. Further, even had he read it during 2001, the letter did not state that FENOC's Bulletin response contained inaccurate or

⁶ The only list of meeting attendees is on Mr. Goyal's August 11, 2001 e-mail, which he did not send to Mr. Moffitt.

⁷ Mr. Moffitt was an INPO host peer from September 10, 2001 through September 28, 2001. In that capacity, he was specifically precluded from performing his normal job functions because he was required to critically evaluate Davis-Besse's performance.

incomplete information.⁸ Even if Mr. Gibbs had told Mr. Moffitt that there was boron left on the center of the RPV head, the information would not have set aside Mr. Moffitt's basic assumptions about the source of the boron and its limited safety significance.

B. The information provided to the NRC Staff during the October 3, 2001 teleconference was not misleading, incomplete, or inaccurate.

1. Allegation:

During the [October 3, 2001] conference call, Mr. Moffitt's direct subordinate informed the NRC that 100% of the RPV head had been inspected during the last outage (12RFO) but that some areas were precluded from inspection and that videotapes of the inspections conducted during 10RFO, 11RFO, and 12RFO had been reviewed. Mr. Moffitt was aware at the time of the October 3, 2001, meeting that the licensee did not conduct a 100% inspection of the RPV head during 12RFO due to the presence of boric acid on the head which obscured a significant number of the RPV head nozzles yet approved the misleading statements thereby causing the incomplete and inaccurate information to be submitted to the NRC.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

The NRC Enforcement Order mischaracterizes the information presented by Mr. Moffitt's direct subordinate during the October 3, 2001 teleconference with the NRC Staff as "incomplete and inaccurate." Although Mr. Moffitt did attend a meeting on October 2, 2001, to prepare for the October 3 teleconference with the representatives of the Office of Nuclear Reactor Regulation (NRR), he denies that he prepared or directed the preparation of a call agenda that contained any inaccurate statements. To prepare for the teleconference, Mr. Moffitt

⁸ According to Mr. Gibbs' September 14, 2001 letter, he reviewed the station's response to the NRC Bulletin.

(who had just been assigned to lead the engineering response to the call) made sure that he would have knowledgeable staff available to answer NRR's questions, and that Framatome ANP experts would be participating in the call. Mr. Moffitt reasonably relied upon Framatome and the Davis-Besse staff to give him and the NRC Staff accurate information.

During the October 3 telephone conference, Mr. Moffitt does not recall hearing his direct subordinate make any false statements to NRR that should have prompted him to immediately issue a verbal correction, based upon his own knowledge of the extent of the 2000 RPV head inspection. As indicated by the transcript of an OIG interview with one of the NRR participants in the teleconference, the NRC clearly understood from that discussion that even though a participant may have said that FENOC had performed a "100 percent inspection" of the RPV head in 2000, FENOC participants also told the NRC Staff "that there were boric acid interferences on some of the nozzles — and my note says five to six of the nozzles — and the inspection did look at the base of each of the other nozzles...."⁹ The OIG investigator subsequently asked the NRR staffer: "Since FirstEnergy said five to six nozzles were obscured, didn't that, in and of itself, inform NRR that a 100 – percent inspection did not occur?"¹⁰ The NRR staffer responded: "From a strict numeric standpoint, yeah...."¹¹

Further, if FENOC had claimed the 2000 inspection included 100 percent of the nozzles, there would have been no reason for NRR to request detailed information about the 1996 and the 1998 visual inspections, which it did. Consequently, the overall characterization to the NRC

⁹ "U.S. Nuclear Regulatory Commission Office of Investigations Interview," August 22, 2002, at 5.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8.

Staff of the 2000 RPV head inspection during the October 3, 2001 conference call was not misleading, incomplete, or inaccurate.

Even if the verbal information were inaccurate or incomplete, any error was promptly cured in a letter from FENOC to the NRC Staff. Specifically, FENOC issued Serial Number 2735 less than two weeks later on October 17, 2001, which specifically referred to the October 3 (and October 11) discussions with the NRC Staff.¹² The first page stated that “[t]his submittal provides updated and additional information in support of the basis for the continued safe operation of the Davis-Besse Nuclear Power Station....”¹³ The submittal then reported that in 1996, “65 of 69 nozzles were viewed,” in 1998, “50 of 69 nozzles were viewed,” and during 2000, “45 of 69 nozzles were viewed.”¹⁴ Serial Number 2735 also conservatively used May 1996 as the date for the postulated initiation of an RPV head nozzle crack. To the extent the NRC Staff now disagrees with this characterization of exactly how many nozzles could be seen, Mr. Moffitt ensured that videos of the inspections were provided to the NRC Staff so it could form its own technical opinions. The NRC Staff in fact reviewed those videos and formed its own opinion.

As recited in the Statements of Consideration for 10 CFR § 50.9, “the Commission intends to apply a rule of reason in assessing completeness of a communication.... Normally, an

¹² Letter from G. Campbell, Vice President, Nuclear, FirstEnergy Nuclear Operating Company, to U.S. Nuclear Regulatory Commission Document Control Desk, “Serial 2735 - Supplemental Information in Response to Bulletin 2001-01, ‘Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles’” (October 17, 2001) (hereinafter “Serial Number 2735”).

¹³ *Id.* at 1.

¹⁴ *Id.*, Attachment 1 at 2.

inadvertent error in an oral communication that is promptly corrected will not result in an enforcement action.”¹⁵ Consequently, even if the information given to the NRC Staff during the October 3, 2001 teleconference regarding the 2000 RPV head inspection was inaccurate and incomplete, it was promptly corrected in Serial Number 2735 and no enforcement action is warranted.

Finally, taking the argument one step further, even had the information given to the NRC Staff prior to its decision been incomplete, inaccurate, or not promptly corrected, it was clearly not “material.” The NRC considers information to be “material” if the “information has a natural tendency or capability to influence an agency decisionmaker...”¹⁶ As an NRR staffer testified in an OIG interview:

I would have not been concerned with their statement of 100-percent inspection, based on the characterization of the interferences.

* * *

Well, in looking at — further down in my notes of the phone call, I have a boxed-in area that says ‘— prior inspection results video? Qualified head,’ and then an arrow that says ‘by 10/25.’ My interpretation of my notes would be that we requested results of other prior inspections, that we requested access to any videos that they had and, also, an analysis or some discussion with them over the qualified head calculations that would be required to determine if they did have a qualified visual inspection in the year 2000. And so those things that we requested, they had indicated they would provide those to us about three weeks later.

¹⁵ Final Rule, “10 CFR Parts 2, 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150 — Completeness and Accuracy of Information,” 52 Fed. Reg. 49362 at 49366 (December 31, 1987).

¹⁶ *Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2)*, CLI-76-22, 4 NRC 480 (1976), *aff’d*, 571 F.2d 1289 (4th Cir. 1978).

* * *

I think even with the five or six, you know, whether they said it was 100 percent or whatever, once we had an indication that there were problems with their head inspection in 2000, we did request information to try to understand the extent of that and how that may have impaired the inspection. If they had said this is 90 percent — you know, we inspected 90 percent of the head — that really would not have had a major impact. It would have, I think, left a different impression in our minds of the adequacy of that exam, but I think we still — you know, we would have pursued the same information that we did pursue.¹⁷

Moreover, in its December 3, 2002 evaluation of the decision to allow Davis-Besse to continue operation past December 31, 2001 (a full year after the decision was made and with the knowledge of the RPV head degradation), the NRC Staff stated:

The NRC staff's evaluation of FENOC's response to Bulletin 2001-01 included information on the quality of past CRDM nozzle inspections at Davis-Besse. The licensee provided information regarding visual inspections performed in 1996 and 1998.... *In each of those two outages and in an inspection in 2000, a large fraction of the VHP nozzles were inspected, but no single inspection looked at all of the VHP nozzles....* [T]he NRC staff concluded that, while the 1996 inspection was a fairly complete visual inspection of the RPV head, the inspection conducted in 1998 was more limited in scope and quality because of the presence of boric acid deposits. The licensee indicated that those deposits were due to CRDM flange leaks and not through-wall leakage of the CRDM nozzles. *The inspection conducted in 2000 was considered to be less effective.*¹⁸

Consequently, because the NRC Staff did not rely upon the information supplied by FENOC during the October 3, 2001 teleconference concerning the 2000 RPV head inspection,

¹⁷ "U.S. Nuclear Regulatory Commission Office of Investigations Interview," August 22, 2002 at 8, 10-11.

¹⁸ Letter from J. Zwolinski, Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, to L. Myers, Chief Operating Officer, FirstEnergy Nuclear Operating Company (December 3, 2002) (hereinafter "Zwolinski Letter"), attachment at 6 (emphasis added).

the information was not material. Moreover, even if more than four CRDM nozzles were not visible during the 1996 RPV head inspection, it was not known to Mr. Moffitt. Quite to the contrary, Mr. Goyal told others that this characterization was accurate. Therefore, even had the information been material, Mr. Moffitt did not know of any alleged errors.

C. FENOC's October 11, 2001 presentation to the NRC Commissioners' Technical Assistants (TAs) was not materially incomplete and inaccurate.

1. Allegation:

The licensee's October 11, 2001, presentation to the NRC Commissioners' Technical Assistants was materially incomplete and inaccurate in that the presentation slides did not state that the build-up of boric acid on the RPV head was so significant that the licensee could not inspect all of the RPV head penetration nozzles. Due to the significant amount of boric acid present on the RPV head, of which Mr. Moffitt was aware, the licensee also did not have a basis for stating that no visible evidence of RPV penetration nozzle leakage was detected. Mr. Moffitt knew the information was incomplete and inaccurate and allowed it to be submitted to the NRC.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

The Enforcement Order mischaracterizes the information presented during the October 11, 2001 meeting with the NRC Commissioners' TAs. It is significant to note that the purpose of the October 11 meeting was to encourage the TAs to have the NRC Staff consider FENOC's technical arguments, not for the TAs to decide the issues for the NRC Staff. Consequently, FENOC did not present all of its technical arguments at the TA meeting.

In preparation for the meeting, Davis-Besse and Framatome staff prepared summary slides. Mr. Moffitt recalls wanting to present the issue of Probabilistic Risk Assessment to the TAs, and believes he was responsible for the presentation of Slide 11 titled "Risk-Informed

Evaluation.”¹⁹ As had been revealed to NRR on October 3, 2001, some CRDM nozzles were obscured from inspection during 12RFO. As a result, the obscured nozzles were conservatively postulated to contain a circumferential crack. For this reason, Slide 7 used the conjunction “or” to show that all of the nozzles were not inspected during 12RFO.

Because the RPV head was not completely inspected during 12RFO, Slide 8 showed that a CRDM crack initiation would have to be postulated prior to 12RFO. At the October 11, 2001 meeting, Mr. Moffitt and others believed that the 1998 outage provided an adequate baseline. In other words, FENOC understood that the CRDM nozzles that would show leakage were viewed in either the 1998 or 2000 outages. Slide 9 identified the conclusion regarding the impact of the postulated crack. Because all of the CRDM nozzles were not viewed in 2000, the assessment first used the earlier start date, applied the crack growth rate for the additional time, then assessed the size of the postulated crack projected into 2002.

FENOC’s October 11th meeting presentation did not represent that all the CRDM nozzles were inspected in 2000. Mr. Moffitt believes that FENOC indicated during this meeting that it had to establish an earlier baseline *because* boric acid obscured some nozzles during the 2000 RPV head inspection. Because these CRDM nozzles were obscured, FENOC could not conclusively ascertain whether they may have contained a circumferential crack. As a result, FENOC indicated during the meeting that it conservatively postulated that each of the CRDM nozzles obscured in 2000 had a crack initiate in 1998. Accordingly, FENOC’s characterization

¹⁹ Mr. Moffitt’s Slide 11, “Risk-Informed Evaluation” presented two bullets: (1) “NSSS vendor-specific risk assessment provides estimated core damage frequency of 3.4 E-7”; and (2) “Per RG 1.174 this is categorized as a ‘very small’ increase in risk.”

of the 2000 RPV head condition during the October 11, 2001 meeting was not “materially incomplete and inaccurate.”

Even had the information been inaccurate and incomplete, any error was subsequently cured in at least two communications between FENOC and the NRC Staff. The first such communication was Serial Number 2735, which specifically referred to the October 3 and October 11 discussions with the NRC Staff. This submittal indicated that in 1996, “65 of 69 nozzles were viewed,” in 1998, “50 of 69 nozzles were viewed,” and in 2000, “45 of 69 nozzles were viewed.”²⁰ The second communication occurred when Mr. Moffitt’s direct subordinate provided copies of the 10RFO, 11RFO, and 12RFO RPV head inspection videos for review to the NRC Staff in Rockville, Maryland.

Even had the information been incomplete, inaccurate, and not timely corrected, it was not material. As also discussed above concerning the October 3rd teleconference, testimony of an NRR staffer and the Staff’s own evaluation of its decision to let Davis-Besse operate past December 31, 2001 indicate that the NRC Staff did not rely upon the information supplied by FENOC during the October 11, 2001 meeting concerning the 2000 RPV head inspection. The NRC has acknowledged that it reviewed the videos and formed its own opinion on the quality of the RPV head inspections. Consequently, the alleged inaccuracy is not material. Moreover, even if this information were material, Mr. Moffitt was not aware of its potential deficiencies.

²⁰ Serial Number 2735, Attachment 1 at 2.

D. FENOC's October 17, 2001 supplemental response to Bulletin 2001-01 was not materially incomplete and inaccurate.

1. Allegation:

The licensee's October 17, 2001, supplemental response was materially incomplete and inaccurate, in that the licensee did not view the stated number of RPV head penetration nozzles during the referenced outages, and the licensee believed that only five RPV head control rod drive mechanism flanges were leaking instead of the 24 RPV head control rod drive mechanism flanges noted in the response. Specifically, during 12RFO the licensee did not clean all of the RPV head; therefore, the licensee could not have viewed each of the RPV head penetration nozzles and determined that the observed boric acid accumulation was not a result of RPV nozzle leakage. Mr. Moffitt knew the information was incomplete and inaccurate but nonetheless, concurred on the response, thereby allowing the information to be submitted to the NRC.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

The Enforcement Order selectively mischaracterizes some of the information supplied in Serial 2735 as "materially incomplete and inaccurate." At the time Serial Number 2735 was issued, Mr. Moffitt reasonably believed that the description of the number of CRDM nozzles inspected in 1996, 1998, and 2000 was accurate. Consequently, Mr. Moffitt did not and could not have known the information was incomplete and inaccurate. Moreover, Mr. Moffitt reasonably understood the response as stating that there were five flanges leaking, and 24 nozzles impacted by the leaking flanges. Contrary to the assertion in the Enforcement Order, the letter did not state that 24 CRDM flanges were leaking.

Following the October 11, 2001 presentation to the TAs, Mr. Moffitt learned from his direct subordinate that there was a question concerning FENOC's description of the extent of

prior RPV head inspections and the number of CRDM nozzles visible during those inspections. Mr. Moffitt learned that FENOC had to use the results of the 1996 inspection, conducted by Mr. Goyal, to establish an accurate baseline for a crack initiation calculation. Mr. Moffitt and his subordinate went to the Regulatory Affairs Manager for direction as to how to address this issue and were instructed that the corrected information should be included in the next supplemental Bulletin response.

FENOC issued Serial Number 2735 on October 17th, which specifically referred to the October 3rd and 11th discussions with members of the NRC Staff. The first page stated, “[t]his submittal provides updated and additional information in support of the basis for the continued safe operation of the Davis-Besse Nuclear Power Station.” The submittal then reported that in 1996, “65 of 69 nozzles were viewed,” in 1998, “50 of 69 nozzles were viewed,” and in 2000, “45 of 69 nozzles were viewed.” Serial Number 2735 also presented FENOC’s conservative calculation that now used May 1996 as the date for the postulated initiation of an RPV head nozzle crack.²¹

Prior to reviewing and approving Serial Number 2735, Mr. Moffitt did not personally view the videotapes from past RPV head inspections in 1996, 1998, and 2000. Nor was he involved in the effort to tabulate the number of CRDM nozzles that could be inspected. He did review a number of photographs with his staff to obtain a sense of assurance regarding the characterizations presented, and found no discrepancies in the ones he checked. As a Director he appropriately relied upon his subordinates, including the two engineers with inspection expertise, Messrs. Goyal and Siemaszko, to accurately report what they had seen. Mr. Goyal has

²¹ Serial Number 2735, Attachment 1, at 3.

subsequently accepted responsibility for falsely approving the statement that the entire RPV head was inspected in 1996,²² and falsely reassuring the author of the PRA “that this assumption [about the entire RPV head’s inspection] was correct.” Mr. Moffitt should not be accused of deliberate misconduct for believing that he too could rely upon Mr. Goyal’s information.²³

Even had the information in Serial Number 2735 been inaccurate and incomplete, any error was subsequently cured in at least two communications between FENOC and the NRC Staff. The first such communication was Serial Number 2744, submitted to the NRC on October 30, 2001.²⁴ This submittal provided an updated version of the previously-submitted RPV head inspection data table and RPV head graphics. It also provided annotated photographs of CRDM nozzles, extracted from the videotapes of the 1996, 1998, and 2000 as-found RPV head inspections, which show the physical condition of the RPV head and CRDM nozzles during those outages, including visible boric acid deposits. The second communication occurred when Mr. Moffitt’s direct subordinate provided copies of the 10RFO, 11RFO, and 12RFO RPV head inspection videos for review by the NRC Staff in Rockville, Maryland. Consequently, the NRC Staff saw the same data that FENOC did.

²² In a Deferred Prosecution Agreement dated November 10, 2005, Mr. Goyal admitted that a statement he made in Serial Number 2731 about RPV head inspection compliance with the Boric Acid Corrosion Control Program was false, as were statements he later made about his RPV head 1996 inspection and impediments.

²³ Goyal Deferred Prosecution Agreement, ¶ 9.

²⁴ Letter from G. Campbell, Vice President, Nuclear, FirstEnergy Nuclear Operating Company, to U.S. Nuclear Regulatory Commission Document Control Desk, “Serial 2744 – Transmittal of results of Reactor Pressure Vessel Head Control Rod Drive Mechanism Nozzle Penetration Visual Examinations for the Davis-Besse Nuclear Power Station” (October 30, 2001) (hereinafter “Serial Number 2744”).

Even had the information been incomplete, inaccurate, and not subsequently corrected, no violation occurred because it was not material. As discussed above concerning FENOC's communications with the NRC during the October 3, 2001 teleconference and October 11, 2001 meeting, the descriptions of the prior RPV head inspections were not material to the NRC's decision to allow Davis-Besse to operate past December 31, 2001. Moreover, even if this information were material, Mr. Moffitt was not aware of its potential deficiencies because he appropriately relied upon Mr. Goyal's representations in this regard.

E. Mr. Moffitt did not engage in deliberate misconduct by providing FENOC and the NRC Staff with information that he knew was not complete and accurate in all material respects.

1. Allegation:

The Enforcement Order alleges, in substance, that the above-stated allegations indicate that Mr. Moffitt engaged in deliberate misconduct by providing FENOC and the NRC Staff with information that he knew was not complete and accurate in all material respects to the NRC, a violation of 10 CFR 50.5(a)(2).

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

Mr. Moffitt did not engage in deliberate misconduct at any time during his participation in activities related to the Bulletin response. Throughout his participation in preparation of FENOC's oral and written communications in response to the Bulletin, he acted in good faith reliance on the evidence reported to him by his staff and Framatome experts that he had no reason to doubt. Once Mr. Moffitt was told that FENOC's historical RPV head inspection results had to be amended to show the extent that boron was obscuring the RPV head from 1996 through 2000, he ensured that what he understood to be complete and accurate statements and

descriptions were timely inserted in FENOC's next written communication to the NRC Staff. By the time it announced the decision allowing Davis-Besse to operate past December 31, 2001, the NRC Staff independently reached strikingly similar conclusions about FENOC's past RPV head inspections. At this time the NRC Staff had viewed FENOC's presentations and videotapes from prior inspections and concluded that the 1996 inspection "was a fairly complete visual inspection," the 1998 inspection was more limited in scope and quality, and "[t]he inspection conducted in 2000 was considered to be less effective."²⁵

F. Mr. Moffitt did not violate 10 C.F.R. § 50.5(a)(2) by placing FENOC in violation of 10 C.F.R. § 50.9.

1. Allegation:

The Enforcement Order charges, in substance, that Mr. Moffitt's purported actions in violation of 10 C.F.R. § 50.5(a)(2) placed FENOC in violation of 10 C.F.R. § 50.9.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

Mr. Moffitt denies that he violated 10 C.F.R. § 50.5(a)(2) by placing FENOC in violation of its obligation under 10 C.F.R. § 50.9 to provide the NRC with information that is complete and accurate in all material respects. As stated previously, Mr. Moffitt believed that complete and accurate information about the extent of prior RPV head inspections had been presented in written and oral communications with the Technical Assistants and NRC Staff. As soon as a question was raised concerning the quality of the information, Mr. Moffitt sought direction from Regulatory Affairs. Mr. Moffitt then used that guidance and promptly cured the prior

²⁵ Zwolinski Letter at 6.

communication failures by ensuring that Serial Number 2735, issued on October 17, 2001, provided the information that the NRC Staff needed to know about the effectiveness of past RPV head inspections. He also knew that the NRC Staff reviewed videos of the prior RPV head inspections.

G. The public health and safety will not be better protected by prohibiting Mr. Moffitt from engaging in NRC-licensed activities.

1. Allegation:

The Enforcement Order alleges, in substance, that the public health and safety require that Mr. Moffitt be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of the Order.

2. Answer:

Mr. Moffitt denies the allegation.

3. Reason for Denial:

Mr. Moffitt was separated from FENOC on September 22, 2002, and has not been employed by another nuclear utility since. Mr. Moffitt's post-FENOC employment was connected to the commercial sales of nuclear products and services. In that capacity, he did not perform any nuclear engineering, operations or maintenance functions.

Mr. Moffitt has voluntarily cooperated with all of the investigations resulting from FENOC's discovery of the RPV head degradation on March 6, 2002. He has accepted full responsibility for his own shortcomings, and shown deep and genuine remorse for his failure to grasp the possibility that dried boron on the RPV head could mask RPV head corrosion. Although Mr. Moffitt had an excellent reputation and provided FENOC with 18 years of laudable service, he was removed from his position for his failure to meet FENOC's expectations for management of the Bulletin response process. Following Mr. Moffitt's separation, he

continued to fully cooperate with OI's and then the Department of Justice's probes of the RPV head issues.

The NRC was aware of Mr. Moffitt's continued employment in the nuclear industry from the time OI issued its report in August of 2003. The NRC did not then seek to remove Mr. Moffitt from NRC-licensed activities. If Mr. Moffitt had posed any actual risk to the public health and safety, the NRC would have removed him from the nuclear industry at that time. Consequently, the Enforcement Order is a punitive remedy, rather than a measure chosen to protect the health and safety of the public. Even if, for the sake of argument, the NRC Staff should prevail, the harsh sanction imposed against Mr. Moffitt is inconsistent with NRC enforcement policy and precedent.

Prior to Mr. Moffitt's involvement in this issue, he was widely praised for his commitment to safety and for his dedication to ensuring that employees felt empowered to raise safety issues without fear of reprisal. His character has not changed; therefore, the overall level of protection of the health and safety of the public will not be increased by his removal from involvement in NRC-licensed activities. Because the Enforcement Order has pointlessly and unfairly destroyed Mr. Moffitt's excellent reputation in the industry, it should be rescinded.

III. DEMAND FOR EXPEDITED HEARING

In accordance with the provisions of 10 CFR § 2.202(c)(1), Mr. Moffitt respectfully requests an expedited hearing on whether the Enforcement Order should be sustained.

IV. CONCLUSION

Mr. Moffitt never intentionally provided inaccurate or incomplete information to the NRC; additionally, he acted promptly to correct evidence brought to him, before the NRC Staff

could act in reliance upon the communications. For the reasons stated above, Mr. Moffitt's actions were not a violation of 10 C.F.R. § 50.5(a)(2). He requests an expedited hearing on the January 4, 2006 Enforcement Order and requests that the Order be rescinded.

Respectfully submitted,

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UNSWORN DECLARATION

I, Steven P. Moffitt, subject of the January 4, 2006 Enforcement Order, declare under penalty of perjury that the facts set forth in the foregoing "Answer To and Request for Hearing" are true and correct to the best of my knowledge, information and belief. This declaration is made pursuant to Title 28 U.S.C. § 1746.



Steven P. Moffitt
[Home Address Deleted
Under 10 C.F.R. § 2.390(a)]

2/22/06

Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Steven P. Moffitt

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)
)
)
IA-05-054

CERTIFICATE OF SERVICE

I hereby certify that copies of "Steven P. Moffitt's Answer to and Request for Expedited Hearing" were served upon the persons listed below by U.S. mail, first class, postage prepaid and by e-mail as indicated by an asterisk (*), on this 23rd day of February, 2006.

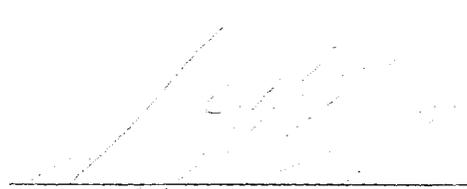
Secretary of the Commission*
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, DC 20555
Facsimile (301)-415-1101

Sara E. Brock, Counsel for NRC Staff *
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HEATHER M. FAUST
(2000-2005)

Of Counsel:
JOHN D. KILLIAN
SMITH B. GEPHART

February 23, 2006

Via Facsimile & Regular Mail

Secretary of the Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16 C1
Washington, DC 20555

Via Facsimile & Regular Mail

Sara E. Brock, Counsel for NRC Staff
U.S. Nuclear Regulatory Commission,
Office of General Counsel
Washington, DC 20555

Re: **Steven P. Moffitt**
IA-05-054

To the Secretary & Attorney Brock:

Enclosed please find Steven P. Moffitt's Answer and Hearing Request. I will be forwarding the original Answer along with two (2) copies to the Secretary's office via first class mail with copies to all on the service list.

Very truly yours,

Jane G. Penny

JGP/cls

Enclosures

cc: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission
Assistant General Counsel for Materials, Litigation and Enforcement
Regional Administrator, NRC Region III
Steven P. Moffitt