

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: 202.739.3000
Fax: 202.739.3001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

RAS 06-00047

January 31, 2006

VIA FEDERAL EXPRESS

Sara E. Brock, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Request Under 10 CFR §§ 2.390 and 9.17 to Withhold Materials from Public Disclosure

Dear Ms. Brock:

In your letter to me dated November 9, 2005, you stated that the U.S. Nuclear Regulatory Commission (NRC) is in the process of reviewing, for public release, documents submitted by FirstEnergy Nuclear Operating Company (FENOC) to the NRC's Office of Investigations (OI) in the matter of NRC Investigation Case No. 3-2002-006. According to your letter, the NRC is evaluating the information disclosed by FENOC during the course of that investigation to determine whether the information that FENOC sought to have withheld under Section 2.390(a)(4) (previously 10 C.F.R. § 2.790(a)(4)) contains trade secrets, or confidential or privileged commercial or financial information and, if so, whether such information should be withheld from public disclosure. In your letter you requested that FENOC submit affidavits supporting its previous claims that certain information disclosed to the NRC during the above referenced investigation should be withheld from public disclosure due to its proprietary nature, as required by Section 2.390(b)(1).

Subsequently, on November 22, 2005, Mark Bezilla, Davis-Besse Nuclear Power Station (DBNPS) Site Vice President, received a similar letter from Christine Lipa, Chief of the NRC's Reactor Project Branch 4. Ms. Lipa requested FENOC to review documents it submitted to the NRC's Augmented Inspection Team (AIT) in mid-2002 as part of the NRC's investigation into the reactor pressure vessel head degradation at DBNPS, and to submit affidavits supporting its previous claims that certain information disclosed to NRC in those documents submitted to the AIT should be withheld from public disclosure due to their proprietary nature pursuant to Section 2.390(b)(1).

In a letter to you dated December 23, 2005, I explained that FENOC had conducted an initial review of documents previously submitted to OI and the AIT and had identified those documents that may contain proprietary information. I also mentioned that vendors to FENOC are the owners of the vast majority of this potentially proprietary information, and consequently, FENOC had asked the owners of the other documents to perform similar reviews and to supply FENOC with affidavits by mid-January 2006 for any such document that the owner determines

Sara E. Brock, Esq.
January 31, 2006
Page 2

should be withheld from public disclosure. Those vendor documents and supporting affidavits FENOC will be provided under separate cover once FENOC receives them.

FENOC has now completed the review of its documents and has determined which should be withheld from public disclosure. Consequently, pursuant to the requirements set forth in 10 CFR §§ 2.390 and 9.17, attached to this letter are:

- Attachment 1 – Tables 1 and 2 showing the documents for which FENOC requests withholding from public disclosure under 10 CFR §§ 2.390(a)(6) and 9.17(a)(6) because they contain personal privacy information (no affidavit required);
- Attachment 2 – Table 3 showing the documents for which FENOC requests withholding from public disclosure under 10 CFR §§ 2.390(a)(4) and 9.17(a)(4) because they contain trade secrets, commercial, or financial information; and
- Attachment 3 – Affidavit of Robert W. Schrauder, Director, Performance Improvement Davis-Besse Nuclear Power Station, requesting withholding from public disclosure the FENOC documents listed in Attachment 2 because they contain trade secrets, commercial, or financial information (affidavit required).

In addition to these Attachments, enclosed please find redacted versions of the documents in Tables 1, 2, and 3 that FENOC requests be partially withheld from public disclosure. The enclosed redacted versions may be released for public disclosure. FENOC requests that the documents previously submitted to OI and the AIT be withheld from public disclosure under 10 CFR § 2.390.

We hope to have the affidavits from the vendor document owners in the next several weeks. Once FENOC receives those affidavits, we will promptly forward them to you under separate cover. Please feel free to call me if you have any questions or would like to discuss these matters further.

Sincerely,


Jay M. Gutierrez

Attachments

cc: Christine Lipa - Chief, Branch 4, Division of Reactor Projects

Table 1: INDEX OF FENOC DOCUMENTS SUPPLIED TO NRC OI FOR WHICH PERSONAL PRIVACY TREATMENT IS REQUESTED UNDER 10 CFR §§ 2.390(a)(6) AND 9.17(a)(6)

No.	File Name (Item __)	Document Bates Label	Document Description	Owner	Request
1.	1	3S1-00001—00051	11/07/02 Position Paper addressing role of FENOC individuals re: RPV head issue	FENOC	Withhold in part
2.	2	3S2-00001—00494	FENOC Execs/Managers' documents re: personnel actions; Human Resource records; summaries of individual performances; copies of disciplinary letters; matrixes identifying proposed actions to take against individuals	FENOC	Withhold in part
3.	3	2S5-0001—00016	Letters sent to sixteen FENOC employees which document FENOC's personnel actions relative to those individuals	FENOC	Withhold in part
4.	4	2S1-00001—00107	H. Bergendahl Personnel File	FENOC	Withhold entirely
5.	5	2S6-00001—00061	A. Siemaszko Personnel File	FENOC	Withhold entirely
6.	6	S16-00014—00027 S16-00029—00033 S16-00057—00060 S16-00260—00297	Training on BACC and RPV Head nozzle integrity	FENOC	Withhold in part
7.	7	S16-01078 S16-01120—01121	Training Workshop completion records	FENOC	Withhold in part
8.	192	S21-00001—00011	Report of Investigation concerning Condition Report #2000-1037	FENOC	Withhold in part

Table 2: INDEX OF FENOC DOCUMENTS SUPPLIED TO NRC AIT FOR WHICH PERSONAL PRIVACY TREATMENT IS REQUESTED UNDER 10 CFR §§ 2.390(a)(6) AND 9.17(a)(6)

No.	File Name	Document Description	Owner	Status
1.	RESUME N-A (1634).pdf	Resumes for various FENOC personnel	FENOC	Withhold in part

Table 3: INDEX OF FENOC DOCUMENTS SUPPLIED TO NRC OI FOR WHICH PROPRIETARY TREATMENT IS REQUESTED UNDER 10 CFR §§ 2.390(a)(4) AND 9.17(a)(4)

No.	File Name (Item __)	Document Bates Label	Document Description	Owner	Request
1.	8	S10-00001—00229	Purchase Order regarding RPV head replacement and supporting documentation	FENOC	Withhold entirely
2.	9	S10-00230—00420 2S3-00138—00234	FENOC purchase orders, procurement package, including FE presentation with cost calculations, and supporting documentation	FENOC	Withhold entirely
3.	27	S14A-00424—00434 S14A-00530	FENOC presentation on RPV head repair/replacement costs	FENOC	Withhold in part
4.	31	S14B-00016—00058	Contractor bid/proposal information such as work scope, schedule and cost data	FENOC	Withhold in part
5.	150	S14P-02222	11/30/01 E-mail from P. Goyal to A. Siemaszko re: CRDM Repair EWR 01-0462-00 costs	FENOC	Withhold in part
6.	174	S14P-01098	06/26/01 E-mail between FENOC employees re: Everest VIT Video Probe System, ROVVER System	FENOC	Withhold in part
7.	181	S14P-02625	Davis-Besse Engineering Work Request 01-03780-00	FENOC	Withhold in part
8.	182	S14P-02626—02635	09/21/01 FAX from M. McLaughlin to P. Goyal re: attached Framatome Proposal for Davis Besse RPV Head Lower Service Support Structure Access Openings Analysis (FRA-ANP Proposal # 4160076)	FENOC	Withhold in part
9.	185	S14S-00237—00241	Davis-Besse 12RFO Commercial Summary	FENOC	Withhold in part
10.	186	S14S-00067	06/26/00 E-mail from G. Beam, Framatome, to A. Wilson re: Rev. 1 DB 12RFO Commercial Summary	FENOC	Withhold in part
11.	193	SUPP1-00001—00199	FENOC contracts for 10-12RFO: Purchase Order and contract documentation	FENOC	Withhold entirely
12.	203	2S2-01127—01149 2S2-01241—01264	FENOC purchase order information	FENOC	Withhold entirely
13.	204	2S2-01150—01151	FENOC Task Authorization re: SIA	FENOC	Withhold in part
14.	213	2S2-00001—00071 2S2-00079—00086	FENOC Purchase Orders and related purchase information	FENOC	Withhold entirely
15.	216	2S2-00142—00147 2S2-00261—00262	FENOC Task Authorizations	FENOC	Withhold in part
16.	230	2S3-00235—00285	Documentation, including Service Agreements, purchase requisitions and procurement package information, re: Sargent & Lundy	FENOC	Withhold in part
17.	232	2S3-00123—00124	FENOC Contractor Estimate for Engineering Services Task Authorization to Sargent & Lundy	FENOC	Withhold in part
18.	278	S14Q-07226—07252	12/20/01 E-mail from E. Szymanski to J. McGee re: 13RFO presentation, with attachment	FENOC	Withhold in part
19.	413	S14R-00700	Budget information for DB head repairs	FENOC	Withhold in part

Table 3: INDEX OF FENOC DOCUMENTS SUPPLIED TO NRC OI FOR WHICH PROPRIETARY TREATMENT IS REQUESTED UNDER 10 CFR §§ 2.390(a)(4) AND 9.17(a)(4)

No.	File Name (Item __)	Document Bates Label	Document Description	Owner	Request
20.	428	S14R-02923-2930	FENOC internal project funding request for inspection of vessel heads	FENOC	Withhold in part
21.	439	S14R-03335-03338	FENOC Budget information regarding CRDM engineering work.	FENOC	Withhold in part
22.	446	S14R-01917-01974	10/31/01 letter from Framatome to M. McLaughlin re: associated proposal reviews	FENOC	Withhold in part
23.	448	S14R-01979-01985	Financial analysis of head replacement timing options	FENOC	Withhold in part
24.	453	S14R-02236-02244	FENOC Task authorization for PO 7076448 to Framatome	FENOC	Withhold in part
25.	455	S14R-02246-02251	FENOC Task authorization for PO 7076448 to Framatome	FENOC	Withhold in part
26.	456	S14R-02473	FENOC Task authorization for PO 7076448 to Framatome	FENOC	Withhold in part
27.	468	S14Q-03332-03419	Davis-Besse Outage Cost Data	FENOC	Withhold in part
28.	469	S14Q-03495-03521	Davis-Besse Outage Budget Data	FENOC	Withhold in part
29.	486	S14Q-07325—07330 S14Q-07339—07350	12RFO Davis-Besse Cost Information	FENOC	Withhold entirely

AFFIDAVIT OF ROBERT W. SCHRAUDER

I, Robert W. Schrauder, Director, Performance Improvement Davis-Besse Nuclear Power Station ("Davis-Besse"), state that:

1. I am authorized to execute this affidavit on behalf of FirstEnergy Nuclear Operating Company ("FENOC") and its affiliates.
2. Since March 2002, various entities within the U. S. Nuclear Regulatory Commission ("NRC"), including the Davis-Besse Augmented Inspection Team ("AIT") and Office of Investigations ("OI"), conducted investigations into the events concerning the Davis-Besse reactor pressure vessel head degradation. The documents listed in Attachment 2 contain, in whole or in part, proprietary commercial and financial information that should be held in confidence by the NRC pursuant to 10 CFR §§ 2.390(a)(4) and 9.17(a)(4), because:
 - a. This information is and has been held in confidence by FENOC and its affiliates.
 - b. This information is of a type that is held in confidence by FENOC and its affiliates, and there is a rational basis for doing so because the information contains sensitive financial competitive information concerning FENOC's anticipated revenues or operating expenses.
 - c. This information was transmitted to the NRC in confidence.
 - d. This information is not available in public sources and could not be gathered readily from other publicly available information.
 - e. Public disclosure of this information would create substantial harm to the competitive position of FENOC by disclosing its anticipated revenues or operating expenses to other parties whose commercial interests may be adverse to those of FENOC.
3. Accordingly, FENOC requests that the documents designated in Attachment 2 be withheld from public disclosure pursuant to the requirements found at 10 CFR §§ 2.390(a)(4) and 9.17(a)(4).

FirstEnergy Nuclear Operating Company



Robert W. Schrauder
Director, Performance Improvement
Davis-Besse Nuclear Power Station

STATE OF OHIO

CITY OF oak Harbor, Ottawa County

Subscribed and sworn to me, a Notary Public, in and for the County and State above named, this 31st day of January 2006.



Lori J. Strauss

My Commission Expires: _____

LORI J. STRAUSS
Notary Public, State of Ohio
My Commission Expires 3/24/2008