

April 25, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
DALE L. MILLER

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Docket No. IA-05-053
ASLBP No. 06-846-02-EA

AFFIDAVIT OF MICHAEL R. JOHNSON

I, Michael R. Johnson, being first duly sworn, do hereby state as follows:

1. I am employed as Director of the Office of Enforcement of the Office (OE). My supervisory responsibilities include oversight of the NRC staff's enforcement actions against employees of FirstEnergy Nuclear Operating Company (FENOC) at the Davis-Besse Nuclear Power Plant.

2. I am aware that the Staff must make all disclosures required by 10 C.F.R. § 2.336 in the above captioned proceeding no later than April 26, 2006.

3. Among the documents potentially subject to disclosure under 10 C.F.R. § 2.336 are the attached list of documents.

4. I have personally reviewed the attached list of documents and have determined, in accordance with the guidance in Management Directive 3.4, that these documents contain pre-decisional information. Portions of the documents on the attached list contain the Staff's analyses, recommendations, opinions, or evaluations, and may not necessarily reflect the final agency position with respect to matters discussed therein.

5. Those documents which can be disclosed in part without harm to agency interests are being disclosed.

6. Further, I have determined that disclosure of the withheld information contained

in the documents on the attached list could result in harm to the agency, in that it would (a) disclose the preliminary views of individual Staff members and/ or the Staff prior to reaching a final agency decision, and could thus create confusion as to the actual policy or views of the NRC staff; (b) hinder the efficiency of the Staff, in that forced disclosure of their internal discussion could serve to chill future deliberations and could interfere with its ability to engage in free exchange of opinions and analyses prior to publishing our final decisions; or (c) imply or suggest incorrectly that the opinions of Staff members involved in these communications were actually final decisions of the agency.

6. Accordingly, I formally invoke the deliberative process privilege with respect to the withheld information the attached list.¹

7. I hereby certify that the foregoing is true and complete to the best of my knowledge, information, and belief.

/RA/

Michael R. Johnson

Subscribed and sworn to before me
this 25 day of April, 2006

Circe E. Martin
Notary Public

My Commission Expires: March 1, 2007

¹Although the "Report of Investigation" appears on the attached list, pre-decisional information contained therein is being withheld pursuant the Affidavit of Guy P. Caputo, Director of the Office of Investigation.