

June 30, 2006

Michael C. Farrar, Chairman  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

E. Roy Hawkens  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Nicholas G. Trikouros  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
DALE L MILLER  
Docket No. IA 05-053, ASLBP No. 06-846-02

Dear Administrative Judges:

In accordance with the 10 C.F.R. § 2.709 please find enclosed the NRC Staff's Answers to Interrogatories and Requests for Admissions in the above captioned proceeding. Documents responsive to the Requests for Production of Documents have been sent through first class U.S. mail to Counsel to Mr. Miller today.

Sincerely,

*/RA by Sara E. Brock/*

Sara E. Brock  
Mary C. Baty  
Michael A. Spencer  
Counsel for the NRC Staff

Attachments: As stated.

cc: Jane G. Penny  
Thomas W. Scott

June 30, 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

NRC STAFF RESPONSES AND OBJECTIONS TO DALE L. MILLER'S  
DISCOVERY REQUESTS DATED JUNE 1, 2006

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.706 and 2.709 of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) hereby files its responses and objections to the interrogatories, specific document requests, and requests for admission contained in "Dale L. Miller's Discovery Requests Addressed to NRC Staff," dated June 1, 2006. The Staff reserves the right to supplement its responses contained herein pursuant to 10 C.F.R. § 2.705(e) of the Commission's regulations.

A. NRC Staff Responses and Objections to Mr. Miller's Interrogatories

INTERROGATORY 1

State the name, business address, and position or title of each person who was consulted or supplied information in answering the Interrogatories set forth below. Designate the Interrogatory or the part of each Interrogatory, for which the identified person was consulted or supplied information.

RESPONSE

In accordance with 10 C.F.R. § 2.706(b)(2) of the Commission's regulations, each member of the NRC staff who assisted in the preparation of answers to interrogatories and requests for admission has signed an affidavit identifying the responses to interrogatories and

responses to requests for admission he assisted in preparing and attesting to that assistance. Affidavits from the following individuals are attached: Jerome Bigoness, William FitzGibbon, Mark Hannan, Scott Kryk, Scott Langan, Kenneth O'Brien, Eugene Richards, Robert Rzepka, and Robert Starkey.

### INTERROGATORY 2

State the name, business address, employer, and position or title of each person you intend to use as a witness in this enforcement proceeding. State the subject matter for which each of the witnesses is expected to testify.

### RESPONSE

Objection. Under 10 C.F.R. § 2.709(a)(2), interrogatories directed toward the Staff need not be answered absent a finding by the presiding officer that the answers are “necessary to a proper decision in the proceeding.” The Staff has not yet settled on which fact witnesses it will call, and under § 2.704(c)(2) parties other than the Staff are ordinarily not required to disclose witness lists until 30 days prior to a scheduled hearing. Therefore, disclosure of the Staff’s list of fact witnesses at this time is not necessary to a proper decision in the proceeding. Furthermore, to the extent that the interrogatory is seeking preliminary thoughts about the witnesses the Staff’s attorneys might use, the Staff asserts the Attorney Work Product privilege.

### INTERROGATORY 3

State the name, business address, employer, and position or title of each person you intend to use as an expert witness, including the details of each expert’s education, professional qualifications, employment history, and the subject matter on which the expert is expected to testify. State a summary of the grounds for each expert’s opinion and identify all documents, data, or other information that each expert has reviewed, or is expected to rely upon for his or her testimony.

RESPONSE

Objection. Under 10 C.F.R. § 2.709(a)(2), interrogatories directed toward the Staff need not be answered absent a finding by the presiding officer that the answers are “necessary to a proper decision in the proceeding.” The Staff has not yet settled on which expert witnesses it will call, and under § 2.704(b)(3) parties other than the Staff are ordinarily not required to disclose information and material related to their expert witnesses until 90 days prior to a scheduled hearing. Therefore, disclosure of the Staff’s expert witnesses and related information at this time is not necessary to a proper decision in the proceeding. Furthermore, to the extent that the interrogatory is seeking preliminary thoughts about the expert witnesses the Staff’s attorneys might use, the Staff asserts the Attorney Work Product privilege.

INTERROGATORY 4

Identify by name, business address, position or title all NRC personnel who were involved in the evaluation or issuance of the Enforcement Order directed to Dale L. Miller.

RESPONSE

<b>NAME</b>	<b>BUSINESS ADDRESS</b>	<b>POSITION OR TITLE</b>
Bruce A. Berson	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Regional Counsel, Region III
Sara E. Brock	USNRC Washington, D.C. 20555	Attorney, Office of the General Counsel
James L. Caldwell	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Regional Administrator, Region III
Lawrence J. Chandler	USNRC Washington, D.C. 20555	Associate General Counsel for Hearings, Enforcement & Administration

Geoffrey E. Grant	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Deputy Regional Administrator, Region III
Michael R. Johnson	USNRC Washington, D.C. 20555	Director, Office of Enforcement
Bradley W. Jones	USNRC Washington, D.C. 20555	Assistant General Counsel for Material, Litigation, and Enforcement, Office of the General Counsel
Kenneth J. Lambert	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Senior Radiation Specialist, Region III
Christine A. Lipa	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Chief, Reactor Projects, Branch 4, Region III
James G. Luehman	USNRC Washington, D.C. 20555	Deputy Director, Office of Enforcement
M. Christopher Nolan	USNRC Washington, D.C. 20555	Former Section Chief, Enforcement, Policy & Program Oversight Section, Office of Enforcement
Kenneth G. O'Brien	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Enforcement/Investigations Officer, Region III
Richard C. Paul	USNRC, Region III Office of Investigations 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Field Office Director, Office of Investigations, Region III
Monte P. Phillips	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Project Engineer, Technical Support Staff, Division of Reactor Projects, Region III

Mark A. Satorius	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Director, Division of Reactor Projects, Region III
Robert D. Starkey	USNRC Washington, D.C. 20555	Office of Enforcement, Senior Enforcement Specialist
Martin J. Virgilio	USNRC Washington, D.C. 20555	Deputy Executive Director for Materials, Research, State, and Compliance Programs
Charles H. Weil	USNRC, Region III 2443 Warrenville Road Suite 210 Lisle, IL 60532-4352	Senior Enforcement Specialist, Region III

INTERROGATORY 5

If you contend that Mr. Miller received a copy of the Bulletin prior to August 14, 2001, state the basis for your contention.

RESPONSE

Whether Mr. Miller received a copy of the Bulletin prior to August 14, 2001 is not within the knowledge of the NRC Staff. However, during his OI interview, Exhibit 113 at 16 (NRC003-0401 at 0416), Mr. Miller stated that he was first involved in DBNPS' response to the Bulletin on August 13, 2001, when the Bulletin was officially received at DBNPS (see NRC017-1187 (S14M 04028) and NRC017-2112 (S14M 04952)), and he was asked to contact other utilities with high susceptibility and establish a group to discuss how to respond to the Bulletin.

INTERROGATORY 6

Do you contend that Mr. Miller was assigned to assist with the Bulletin response preparation before August 17, 2001, the date he started to assemble a utilities response group? If so, state all facts in support of the contention with references to the specific testimony or documents relied upon.

RESPONSE

The NRC Staff contends that Mr. Miller was involved in DBNPS' Bulletin response preparation prior to August 17, 2001. During his OI interview, Exhibit 114 at p. 13 (NRC002-1601 at 1613), Dale Wuokko states that a week or a week and a half after the Bulletin was issued (i.e. in the August 12-15 time frame), responsibility for DBNPS' response to the Bulletin was turned over to Mr. Miller's group. On August 20, 2001, Mr. Miller received an e-mail transmitting the "latest draft" of DBNPS' Bulletin Response dated August 18, 2001 (NRC007-2075). Whether or not Mr. Miller was assigned to assist with preparation of the Bulletin response prior to August 17, 2001, is not within the knowledge of the NRC Staff. However, as stated in response to Interrogatory No. 5, Mr. Miller was first involved in DBNPS' response to the Bulletin on August 13, when he was asked to assemble a utilities response group.

INTERROGATORY 7

Do you contend that Mr. Miller received a draft copy of Serial 2731 prior to August 20, 2001, when he received "draft 8-18-1.doc" (DLM 0000054)? If so, state all facts in support of the contention with references to the specific testimony or documents relied upon.

RESPONSE

Whether Mr. Miller received a draft copy of Serial 2731 *prior* to August 20, 2001, when he received "draft 8-18-1.doc" (DLM000054) is not within the knowledge of the NRC Staff.

INTERROGATORY 8

Do you contend that Dale Miller, Compliance Supervisor in FENOC's Regulatory Affairs unit, had greater responsibility for the review of Serial No. 2731 than Dale R. Wuokko, Licensing Supervisor in FENOC's Regulatory Affairs unit? If so, state all facts in support of the contention with references to specific testimony or documents relied upon.

## RESPONSE

The Staff contends that Dale Miller had a greater responsibility for the review of Serial No. 2731 than Dale Wuokko. Facts in support of this contention include the following:

1. Mr. Wuokko stated that the Bulletin response was turned over to Dale Miller's group. (Exhibit 114 at 17 (NRC002-1627)). He further stated that his involvement dropped off after it was turned over to Mr. Miller's group. (Exhibit 114 at 55 (NRC002-1655)). Mr. Wuokko stated that since Serial No. 2731 was prepared by Rod Cook, it was Mr. Miller's role, as the supervisor of Mr. Cook, to review his work. (Exhibit 114 at 69 (NRC002-1669)).
2. Mr. Cook stated that he was working for Mr. Miller when he became involved in the drafting of Serial No. 2731. (Exhibit 108 at 31-32 (NRC002-1474 - NRC002-1475)).
3. Mr. Miller stated that Mr. Cook's function was to assemble information from engineering into a letter. Since Mr. Miller was the supervisor of compliance his function was to review the letter before it went out. (Exhibit 113 at 21 (NRC003-0421)). Mr. Miller stated that Mr. Cook's contract was under Mr. Miller. (Exhibit 113 at 23 (NRC003-0423)). Mr. Miller further stated that Mr. Cook was reporting to Mr. Miller on the bulletin response. (Exhibit 113 at 86 (NRC003-0486)).
4. Mr. Siemaszko stated that Mr. Miller and Mr. Cook were the actual creators of Serial No. 2731 (Exhibit 49 at 97-98 (NRC001-0760 - NRC001-0761)), (Exhibit 49 at 100 (NRC001-0763)), (Exhibit 49 at 118 (NRC001-0781)), (Exhibit 116 at 34-35 (NRC004-1403 - NRC004-1404)), (Exhibit 49 at 188 (NRC004-1557)). Mr. Siemaszko stated that everyone supplied information to Mr. Miller. (Exhibit 49 at 98, (NRC001-0761)).
5. Both Mr. Wuokko and Mr. Miller were copied on at least four e-mails in August 2001 regarding the content of the Bulletin response. Mr. Miller was copied on at least three e-mails regarding the content of the bulletin response that Mr. Wuokko was not copied on. The NRC Staff is unaware of any e-mails regarding the content of the Bulletin response that Mr. Wuokko was copied on that Mr. Miller was not also copied on. (Exhibits 97 (NRC008-0188), 99 (NRC017-1465), 100 (NRC020-0099), 102 (NRC017-2128), 103 (NRC017-0753), 110 (NRC008-1165), 145 (NRC0007-1754)).



INTERROGATORY 9

If you contend that Regulatory Affairs Contractor Rodney M. Cook did not report to Dale Wuokko during the preparation of Serial No. 2731, state all facts in support of the contention with references to the specific testimony or documents relied upon.

RESPONSE

The Staff contends that Mr. Cook reported primarily to Mr. Miller during the preparation of Serial No. 2731. Facts in support of the contention are those facts stated in the answer to Interrogatory No. 8.

INTERROGATORY 10

Do you contend that Mr. Miller was legally required to act upon *copies* of "several E-mails" received from Senior Design Engineer Prasoon Goyal during August of 2001 (including copies dated August 27, 2001 and August 30, 2001)? If so, state the regulatory basis for this requirement.

RESPONSE

Mr. Miller had a responsibility to provide his employer, an NRC licensee (FENOC), with accurate and complete information regarding the condition of the RPV head, especially when that information was relevant to the licensee's response to the Bulletin. 10 C.F.R. § 50.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects. To the extent that the e-mails from Mr. Goyal provided Mr. Miller with relevant information concerning the condition of the RPV head, Mr. Miller cannot ignore that relevant information, regardless of how he acquired that information (e.g., via an e-mail). Although there is not a specific regulation which required Mr. Miller to act upon the e-mails from Mr. Goyal, as stated above, 10 C.F.R. § 50.9 does require that complete and accurate information be provided to the Commission by a licensee.

## INTERROGATORY 11

Do you contend that Prasoon Goyal's August 27, 2001, e-mail raised a concern to Mr. Miller about the accuracy and completeness of Serial No. 2731? If so, state all the facts that support the contention with references to the specific testimony or documents relied upon.

## RESPONSE

Yes. The NRC Staff's contention is based upon the following documents and testimony:

1. The e-mail was sent by Mr. Goyal to Rodney Cook, a contract engineer under the supervision of Mr. Miller. Mr. Goyal carbon copied Mr. Miller and a number of other individuals. E-mail from Prasoon Goyal, dated 08/27/01 (Exhibit 145 (NRC007-1755), NRC017-2706, DLM00000325).
  - a. In item #1 of Mr. Goyal's e-mail, he writes that the FENOC response states the "head was videotaped after cleaning" and "we need to make sure that we have the tapes."
  - b. In item #2 of Mr. Goyal's e-mail, he indicates that the Bulletin response is not complete and accurate: "it [Serial 2731] gives the impression to the reader that we were able to look at all the CRDMs" but, "It is very difficult to look at the CRDMs when there is boric acid around it."
  - c. In item #3 of Mr. Goyal's e-mail, he mentions "cabling from the top of the RV head to the missile shield. We are silent on this subject."
2. Transcript of Mr. Miller's OI interview (Exhibit 113 (NRC003-0401 - NRC003-0502)).
  - a. Knowledge & Training
    - i. At the time of his interview, Mr. Miller had been employed by FENOC and or Toledo Edison for 30 years (Exhibit 113 at 4 (NRC003-0404)). He is an engineer by education. He was in licensing from 1994 until the date of his interview. He was in Quality Assurance for 8 years. He was a supervisor in Compliance for 3 years (Exhibit 113 at 6 (NRC003-0506)). From 1978-1985 he was a Senior Reactor Operator.
    - ii. Mr. Miller acknowledged receipt of training in boric acid control (Exhibit 113 at 11-12 (NRC003-0406 to 0407)).

- iii. Mr. Miller acknowledged receipt of Mr. Goyal's e-mail and demonstrated understanding of its contents (Exhibit 113 at 67-71 (NRC003-0466 - NRC003-04471)).
- b. Involvement in Bulletin Response
  - i. Mr. Miller acknowledged being involved in the response to the NRC Bulletin. (Exhibit 113 at 16 (NRC003-0416)). Mr. Miller stated that he was assigned to contact other utilities to have a "common approach" and that he obtained copies of their responses to the NRC. (Exhibit 113 at 16-18 (NRC003-0416 to 417)).
  - ii. Mr. Miller states that he knew that the information Mr. Cook received from engineering "vacillated a little bit." Mr. Miller states that sometimes Mr. Siemaszko "would say the head was clean, other times he would say, well, there's boric acid on the head." (Exhibit 113 at 36 (NRC003-0436)).
  - iii. Mr. Miller stated that the collective approach to responding to the Bulletin was "how can we [DBNPS] satisfy the information needs of the NRC for them to be comfortable with Davis-Besse continuing to operated . . . just try to give them the information that we thought they needed to make a decision." (Exhibit 113 at 99 (NRC003-0499)).
- c. Review & Responsibility
  - i. Mr. Miller stated that although Mr. Cook was responsible for gathering technical information and assembling the letter, it was his (Mr. Miller's) function as supervisor of compliance to review the letter (Serial 2731) before it went out for review. (Exhibit 113 at 18-21 (NRC004-418 to 421)).
  - ii. Mr. Miller acknowledged that Mr. Cook was reporting to him. (Exhibit at 86 (NRC003-0486)).
  - iii. Mr. Miller acknowledged that he reviewed Serial 2731 (Exhibit 113 (NRC003-0487)).
- 3. Transcript of Andrew Siemaszko's OI interview. (Exhibit 49 (NRC001-0663 - NRC001-0870)).
  - a. Mr. Siemaszko stated that "Miller was running the show" in responding to the NRC's inquiries. (Exhibit 49 at 98 (NRC001-0761)).
  - b. Mr. Siemaszko stated that Miller and Cook authored the written

response. (Exhibit 49 at 98,185-86 (NRC001-0761 & NRC001-0848 - NRC001-0849)).

4. Transcript of Rodney Cook's OI interview. (Exhibit 108 (NRC002-1444 - NRC002-1600)).
  - a. Mr. Cook stated that Mr. Miller established a network of other utilities that were responding to the industry wide issue of boric acid. (Exhibit 108 at 19-20 (NRC002-1462 - NRC002-1463)).
  - b. Mr. Cook stated that he discussed technical issues with Mr. Miller. (Exhibit 108 at 31 (NRC002-1474)).

#### INTERROGATORY 12

Do you contend that Prasoon Goyal's August 30, 2001, e-mail raised a concern to Mr. Miller about the accuracy and completeness of Serial No. 2731? If so, state all the facts that support the contention with references to the specific testimony or documents relied upon.

#### RESPONSE

The NRC Staff contends that Mr. Goyal's August 30, 2001 e-mail raised a concern to Mr. Miller about the accuracy and completeness of Serial 2731. The NRC Staff's contention is based upon the following:

1. E-mail from Prasoon Goyal, dated 08/30/01 Re: Head Inspection. (Exhibit 89 (NRC010-00503) NRC007-1764, 05738).
  - a. The language contained in this e-mail stands on its own. The e-mail was sent from Mr. Goyal, directly to Messrs. Siemaszko and McLaughlin with carbon copies to Mr. Miller and Mr. Miller's subordinate Mr. Cook. Based on the title and distribution, there is little doubt that the topic and discussion is more specific and focused.
  - b. Mr. Goyal's message is unambiguous: "I have not seen any EWR to cut openings in the service structure in 13<sup>th</sup> RFO. . . . We do not say anywhere in our response to the bulletin that inspection thru the mouse holes creates an impediment for 100% visual examination (management need to know this)."
2. Transcript of Mr. Miller's OI Interview. (Exhibit 113 (NRC003-0401 -

NRC003-0520)). See Staff's Answer to Interrogatory No. 11.

3. Transcript of Rodney Cook's OI Interview. (Exhibit 108 (NRC002-1444 - NRC002-1600)).
  - a. Mr. Cook identified Mr. Miller as one of two supervisors receiving Mr. Goyal's E-mail. (Exhibit 108 at 57-58 (NRC002-1499 - NRC002-1501)).
  - b. Mr. Cook stated that he read Mr. Goyal's E-mail to say: "hey, all you folks be aware. We need to tell managers about it." (Exhibit 108 at 58 (NRC002-1501)).
4. Transcript of Prasoon Goyal's OI Interview. (Exhibit 27 (NRC004-0317 - NRC004-0482)).
  - a. Mr. Goyal indicated that his e-mails were intended to point out that in past inspections, the source of the leakage could not be determined because of access problems. (Exhibit 27 at 73 (NRC004-0389)).
  - b. Mr. Goyal stated that his "e-mails are all referring to [the] same thing, that we cannot remove the boric acid, the noncompliance in the procedures and the need to do something." (Exhibit 27 at 156 (NRC004-0472)).

### INTERROGATORY 13

If you contend that Mr. Miller wrote, inserted, or deleted any language included in any draft of Serial 2731, state all facts that support the contention with references to the specific testimony or documents relied upon.

### RESPONSE

The NRC Staff contends that Mr. Miller was involved in the process of drafting Serial 2731. Whether Mr. Miller wrote, inserted, or deleted any language included in any draft of Serial 2731, is not within the knowledge of the NRC Staff. According to the documents and testimony listed below, Mr. Miller was involved in every aspect of the drafting process and also in the final review of Serial 2731.

Testimony

1. Miller Interview Transcript, Exhibit 113 at pages 51 (NRC003-0451), 57-58 (NRC003-0457 to 0458), 74-81 (NRC003-0474 to 0481), and 82-87 (NRC003-0482 to 0487) (demonstrating Mr. Miller's intimate knowledge of the drafting and reviewing of Serial 2731).
2. Cook Interview Transcript, Exhibit 108 at pages 31-32 (NRC002-1587 - 1598); 154-155 (NRC002-1474 - 1475) (indicating that Mr. Miller was involved in discussion involving the content of Serial 2731).
3. Siemaszko Interview Transcript, Exhibit 49 at pages 97-99 (NRC001-0760 - 0762).
4. Interview of Mr. Miller by Randy Rossomme dated 06-26-2002 (NRC026-3014 - 3021; DLM 00000559).

Documents

1. E-Mail dated 08-22-2001, From Rodney Cook to Mr. Miller et al., Re: Serial 2731 Revisited (NRC008-0189) (transmitting new version of Serial 2731).
2. E-Mail dated 08-27-2001, From Rodney Cook to Mr. Miller et al., Re: Serial 2731 8-27-01 Version 1b (NRC017-2678).
3. E-Mail dated 08-30-2001, From Prasoon Goyal to Messrs. Siemaszko and McLaughlin, with carbon copy to Messrs. Miller and Cook, Re: Head Inspection (NRC010-0503; 05738).
4. E-Mail dated 08-27-2001, From Prasoon Goyal to Rodney Cook, with carbon copy to Mr. Miller Re: Serial 2731 8-27-2001 Version 1b (NRC0170-2705).
5. E-Mail dated 08-27-2001, From Rodney Cook to Mr. Miller et al., Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-01 (NRC016-0753).
6. E-Mail dated 08-2001, From Rodney Cook to Mr. Miller et al., Re: 12 RFO RV Head Inspection-Bulletin 2001-01 Response (NRC008-2335).
7. E-Mail dated 08-24-2001, From Rodney Cook to Mr. Miller et al., Re: Serial 2731 8-24-01 Draft Version 1a (NRC020-0099).
8. E-Mail dated 08-22-2001, From Rodney Cook to Mr. Miller et al., Re: Serial 2731 Revisited (NRC008-2032).

9. E-Mail dated 08-22-2001, From Gary Miller to Mr. Miller Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-01 (NRC008-0508).
10. E-Mail dated 08-22-2001, From Erdal Caba to Mr. Miller et al., Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-01 (NRC007-2595).
11. E-Mail dated 08-22-2001, From Rodney Cook to Mr. Miller et al., Re: New Draft on CRDM Cracking (NRC007-2075).
12. E-Mail dated 08-30-2001, From Andrew Siemaszko to Mr. Miller et al., Re: Simpkins Inquiry (NRC016-2698 to 1700).

#### INTERROGATORY 14

If you contend that Mr. Miller reviewed or approved a draft copy of Serial 2731, after he signed his August 30, 2001 concurrence on the FENOC Review and Approval Report form, state all facts that support the contention with references to the specific testimony or documents relied upon.

#### RESPONSE

The NRC Staff contends that on August 30, 2001, Mr. Miller concurred on Serial 2731 by signing the FENOC Review and Approval Report form for Serial 2731. Whether Mr. Miller reviewed or approved a draft copy of Serial 2731 after he signed the FENOC Review and Approval Report form for Serial 2731 is not within the Staff's knowledge. The Staff does contend that Mr. Miller was informed of Guy Campbell's changes to DBNPS' Bulletin Response by an e-mail from Andrew Siemaszko, which Mr. Miller forwarded to Messrs. Cook, Lockwood, and McLaughlin. (S14M-20707, DLM 00000452, NRC008-1885 - NRC008-1886, NRC016-2698 - NRC016-1700, NRC017-1918 - NRC017-1919).

#### INTERROGATORY 15

State the basis for your contention that Mr. Miller did not conduct his responsibilities during the preparation of Serial No. 2731, in a manner that was in compliance with the Commission's requirements.

## RESPONSE

Mr. Miller, prior to August 30, 2001, had knowledge of the condition of the RPV head and the limitations regarding RPV head inspections. Nevertheless, on August 30, 2001, Mr. Miller concurred on the licensee's September 4, 2001, response (i.e. Serial No. 2731) which contained incomplete and inaccurate information regarding the condition of the RPV head and limitations regarding RPV head inspections. With his prior knowledge of the RPV head conditions and RPV head inspection limitations, Mr. Miller's concurrence on the September 4<sup>th</sup> response contributed to FENOC being in violation of 10 C.F.R. § 50.9 and placed himself in violation of 10 C.F.R § 50.5(a)(2). 10 C.F.R. § 50.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects. 10 C.F.R. § 50.5(a)(2) requires in part that an individual may not deliberately submit to the NRC or a licensee, information that the person submitting the information knows to be incomplete or inaccurate in some material respect. Mr. Miller knew that the response being prepared was to be provided to the NRC. Mr. Miller, as a licensee employee, had a responsibility to comply with the Commission's requirements. Mr. Miller did not comply with the Commission's requirements when he placed himself in violation of 10 C.F.R. § 50.5(a)(2) and contributed to placing FENOC in violation of 10 C.F.R. § 50.9 by concurring on the September 4<sup>th</sup> response which contained incomplete and inaccurate information.

## INTERROGATORY 16

State the basis for your contention that Mr. Miller's actions during August 2001, "demonstrated a pattern of deliberate inaccurate or incomplete documentation of information that was required to be submitted to the NRC."



RESPONSE

While employed by FENOC, an NRC licensee, Mr. Miller engaged in deliberate misconduct by deliberately providing FENOC and the NRC with information that he knew was not complete or accurate in all material respects to the NRC, a violation of 10 C.F.R. § 50.5(a)(2). Mr. Miller's actions also placed FENOC in violation of 10 C.F.R. § 50.9. The NRC Staff contends that Mr. Miller's deliberate misconduct contributed to the overall pattern of deliberate inaccurate or incomplete documentation of information that was required to be submitted to the NRC that was demonstrated by FENOC and its employees.

INTERROGATORY 17

State the basis for your contention that Mr. Miller had "sufficient knowledge of the condition of the RPV head and the limitations experienced during RPV head inspections" that he deliberately provided materially incomplete and inaccurate information when, on August 30, 2001, he concurred on the Bulletin Response.

RESPONSE

The NRC Staff's contention that Mr. Miller had sufficient knowledge of the condition of the RPV head and the limitations experienced during RPV head inspections is based upon the following:

Testimony

1. Transcript of Andrew Siemaszko's OI interview Exhibit 49 (NRC001-0663-NRC001-870).
  - a. Mr. Siemaszko stated that Mr. Miller "had the lead" in writing the response to Bulletin 2001-01 and that Mr. Miller was "running the show." (Exhibit 49 at 97-102 (NRC001-0760 to NRC001-0764)).
  - b. Mr. Siemaszko testified that Mr. Miller, among others, was informed of the problems experienced with seeing the nozzles. (Exhibit 49 at 172-179 (NRC001-0835-NRC001-0842))
2. Transcript of Rodney Cook's OI Interview Exhibit 108 (NRC002-1444).

- a. Mr. Cook stated that Miller took part in discussions about the descriptions of past inspections in Serial No. 2731 on August 20, 2001, or August 22, 2001. (Exhibit 108 at 154-155 (NRC002-1597 - NRC002-1598)).
  - b. Mr. Cook stated he discussed the technical content of Serial 2731 with Mr. Miller. (Exhibit 108 at 31-32 (NRC002-1474 - NRC002-1475)).
  - c. Mr. Cook stated that Mr. Miller established a network of other utilities that were responding to the industry-wide issue of boric acid and conducted teleconferences. (Exhibit 108 at 19-20 (NRC002-1462-NRC002-1463)).
3. Transcript of Mr. Miller's OI interview Exhibit 113 (NRC003-0410).
- a. Mr. Miller demonstrated knowledge of the process of drafting Serial 2731. (Exhibit 113 at 74-78 (NRC003-0474-NRC003-0487)).
  - b. At the time of his interview, Mr. Miller had been employed by FENOC and or Toledo Edison for 30 years. (Exhibit 113 at 4 (NRC003-0404)). He is an engineer by education. He was in licensing from 1994 until the date of his interview. He was in Quality Assurance for 8 years. He was a supervisor in Compliance for 3 years. (Exhibit 113 at 6 (NRC003-0506)). From 1978-1985 he was a Senior Reactor Operator.
  - c. Mr. Miller acknowledged involvement in the response to the NRC Bulletin. (Exhibit 113 at 16 (NRC003-0416)).
  - d. Mr. Miller stated that he was assigned to contact other utilities to develop a "common approach" to responding to the Bulletin and that he obtained copies of their responses to the NRC. (Exhibit 113 at 16-18 (NRC003-0416-17)).
4. Internal interview with Rodney Cook, dated 06-18-02 at 1 (NRC026-2850).
- a. Cook stated that Miller had "set up a network among other B&W utilities to determine what everyone was hearing and how everything was going."
5. Internal interview with Andrew Siemaszko, dated 06-20-02, page 1 (NRC026-3077).
- a. Mr. Siemaszko testified to an internal investigator that as far as Serial No. 2731, Miller was the "main player" in the effort.

6. Internal interview of Mr. Miller NRC026-3014-NRC026-3021 (DLM00000559-DLM00000556).
  - a. Mr. Miller stated that his review of Serial 2731 “was fairly good review . . . .”

Documents

1. Document NRC029-0833 at NRC029-0834: Response to NRC subpoena requesting information on individuals providing input, drafting, preparation, review, etc. for Serial No. 2731. Mr. Miller is listed as being on the “green sheet” (Review and Approval Report).
2. Document NRC017-0664 (NRC0016-1114, NRC023-0025, DLM00000241): Utility Response Group Teleconference Notes from 8/23/01 call.
3. Document NRC016-1110 (NRC017-0667, NRC023-0029, DLM00000331): Utility Response Group Teleconference Notes from 8/27/01 call.
4. Dale L. Miller’s Answer and Request for Hearing at 4.

E-Mails

1. E-mail, dated 08-27-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 8-27-01 Version 1b (NRC017-2678).
2. E-mail, dated 08-27-2001, from Prasoon Goyal to Dale Miller et al, Re: Serial 2731 8-27-01 Version 1b (NRC017-2705).
3. E-mail, dated 08-27-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 8-27-01 Version 1b (NRC007-1728).
4. E-mail, dated 08-22-2001, from Erdal Caba to Dale Miller et al, Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-001 (NRC016-0753).
5. E-mail, dated 08-22-2001, from Rodney Cook to Dale Miller et al, Re: 12 RFO RV Head Inspection - Bulletin 2001-001 Response (NRC008-2335).
6. E-mail, dated 8-24-01, from Rodney Cook to Dale Miller et al, Re: Serial No. 2731 8-24-01 Draft Version 1a (NRC020-0099).
7. E-mail, dated 08-22-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 Revisited (NRC008-2032).

8. E-mail, dated 08-22-2001, from Gary Miller to Dale Miller, Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-001 (NRC008-0508).
9. E-mail, dated 08-22-2001, from Erdal Caba to Dale Miller et al, Re: Re: Telephone Conference Call to Discuss Response to NRC Bulletin 2001-001 (NRC007-2595).
10. E-mail, dated 08-22-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 Revisited (NRC017-0497).
11. E-mail, dated 08-20-2001, from Rodney Cook to Dale Miller et al, Re: New Draft on CRDM Cracking (NRC007-2075).
12. E-mail, dated 08-22-2001, from Prasoon Goyal to Miller et al, Re: 12RFO RV Head Inspection - Bulletin 2001-001 Response (NRC007-2610).
13. E-mail, dated 08-23-2001, from Dale Miller to George Rombold et al, Re: Agenda for the Bulletin 2001-001 Teleconference (NRC007-2119).
14. E-mail, dated 08-23-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 Part 2 (NRC008-0462).
15. E-mail, dated 08-23-2001, from Dale Miller to George Rombold et al, Re: B&W Plant Bulletin 2001-001 Current Plans (NRC008-1919).
16. E-mail, dated 08-23-2001, from Rodney Cook to Dale Miller et al, Re: Serial 2731 with Prasoon's and Charles Daft's Comments Incorporated (NRC008-2184).

#### INTERROGATORY 18

State the basis for your contention that Mr. Miller's actions affected the health and safety of the public in a manner that requires his prohibition from employment in NRC-licensed activities for a period of five years from the date of the Order.

#### RESPONSE

The NRC's primary goal is to regulate the safe uses of radioactive materials for civilian purposes to ensure the protection of public health and safety and the environment. In order to achieve this goal, the NRC must be able to rely on licensees and their employees to comply with NRC requirements. The NRC determined that Mr. Miller, while employed by the licensee,

engaged in deliberate misconduct, a violation of 10 C.F.R. § 50.5(a)(2), by deliberately providing FENOC and the NRC information that he knew was not complete or accurate in all material respects. The NRC determined that these violations were of very high safety and regulatory significance. As stated in the Order, Mr. Miller's deliberate actions raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. Since the NRC does not have reasonable assurance that Mr. Miller can conduct licensed activities in compliance with the Commission's requirements, the health and safety of the public will be protected if Mr. Miller is prohibited from involvement in NRC-licensed activities.

B. NRC Staff Responses to Mr. Miller's Specific Document Requests

DOCUMENT REQUEST 1

An unredacted copy of the OI Report for Case No. 3-2002-006 dated August 22, 2003, (30000-30232), including the redacted parts of or entire pages labeled: 30003-30005, 30007-30010, 30017, 30030-30031, 30042-30053, 30063-30074, 30080-30082, 30101-30102, 30105-30106, 30124-30126, 30130-30131, 30134-30135, 30174-30178, 30185-30186, 30193-30195, 30197, and 30200-30210. Please include OI Report pages 17 and 18.

RESPONSE

The NRC Staff has asserted the deliberative process privilege for portions of the OI Report. The unredacted version of the report was included on the deliberative process privilege log served on April 25, 2006 (30235-30468). The Staff's assertion of the deliberative process privilege is supported by the Affidavit of Guy Caputo, Director of the Office of Investigations, that the Staff filed with the Board on April 25, 2006. Of the pages requested in Document Request No. 1, the Staff has asserted the deliberative process privilege on the following pages of the redacted copy (30000-30232): 30063, 30074, 30080, 30082, 30101-30102, 30105-30106, 30124-30126, 30130-30131, 30134-30135, 30174-30178, 30185-30186, 30193-30195, 30193, 30195, 30197, 30200-30201, and 30208.

The NRC Staff redacted, in part or in whole, the pages listed below on the basis of relevance and personal privacy—disclosure would constitute an unwarranted invasion of personal privacy. In general, these pages are devoted to unsubstantiated allegations and/or allegations that do not involve Messrs. Moffitt and Miller. The unredacted version of the report was included on the personal privacy privilege log served on April 25, 2006 (30235-30468). Of the pages requested, the NRC Staff has asserted the personal privacy privilege on the following pages of the redacted copy (30000-30232): 30003-30005, 30007-300010, 300017, 3030-3031, 30042-30053, 30064-30073, 30081-30082, 30135, 30197, 30201, 30202-30208, 30209-30210.

Pages 17 and 18 of the OI Report were inadvertently left out during the Staff's production process and are enclosed.

## DOCUMENT REQUEST 2

An unredacted and complete copy of all Exhibits issued on September 5, 2003 to OI Report No. 3-2002-06 (02554A). A list of exhibits is set out at 02555A-02517A.

## RESPONSE

The NRC Staff's 10 C.F.R. § 2.336(b) mandatory disclosures dated April 25, 2006, included all of the requested exhibits with the exception of exhibit 140, which was provided via the Staff's 5<sup>th</sup> Supplemental Disclosure. These exhibits are identified as such in the "Full Name" column of document indexes served by the Staff on April 25, 2006. Exhibit 1, however, is not identified as an exhibit in the "Full Name" column. Exhibit 1 is bates number 02150-02151. Also, Exhibit 54 may not be properly identified. Exhibit 54 is bates number NRC004-0948 - NRC004-0950. Although Exhibit 71, Report of Interview of Hengge, was completely redacted, document 21074-21075 is the same document and is not redacted.

The NRC Staff redacted basic personal privacy information (e.g. home address, home phone number, social security number, date of birth) from the exhibits. This type of redaction is

not listed. The NRC Staff asserts the personal privacy privilege for redactions listed in the table below.

Bates Numbers	Title	Exhibit Number	Explanation
NRC002-0891	Interview of Mark McLaughlin	Ex 117	Personal Privacy: personnel issues
NRC002-1050 NRC002-1051	Interview of Guy Campbell	Ex 111	Personal Privacy: personnel issues
NRC002-1139 NRC002-1140	Interview of Steven Moffitt	Ex 118	Personal Privacy: personnel issues
NRC002-1264 NRC002-1265	Interview of David Geisen	Ex 115	Personal Privacy: personnel issues
NRC002-1697 NRC002-1797 NRC002-1798 NRC002-1799	Interview of David Lockwood	Ex 112	Personal Privacy: personnel issues
NRC002-1950 NRC002-1951 NRC002-1952	Interview of Eshelman	Ex 31	Personal Privacy: personnel issues
NRC003-0262 NRC003-0263 (21074- 21075—unredacted version)	Report of Interview of Craig Hengge	Ex 71	This LLTF Record of Interview is completely redacted but an unredacted version was provided
NRC003-0407	Interview of Dale Miller	Ex 113	Personal Privacy: personnel issues
NRC003-0812 NRC003-0813	Interview of Scott Coakley	Ex 51	Personal Privacy: personnel issues
NRC003-1055 NRC003-1056 NRC003-1085 NRC003-1110	Interview of Arthur Lewis	Ex 249	Personal Privacy: unwarranted invasion of personal privacy
NRC004-0321 NRC004-0322 NRC004-0323	Interview of Prason Goyal	Ex 27	Personal Privacy: personnel issues

NRC004-0496 NRC004-0497 NRC004-0498 NRC004-0499 NRC004-0500 NRC004-0527 NRC004-0528	Interview of Saunders	Ex 270	Personal Privacy: personnel issues
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C. NRC Staff's Response to Mr. Miller's Requests for Admission

REQUEST FOR ADMISSION 1

At all times relevant, Dale L. Miler was the Compliance Supervisor of Davis-Besse's Regulatory Affairs unit, and Dale R. Wuokko was the Licensing Supervisor of Davis-Besse's Regulatory Affairs Unit.

RESPONSE

The Staff admits that during the time period of August 1, 2001-September 4, 2001, Dale L. Miller was the Compliance Supervisor of Davis-Besse's Regulatory Affairs Unit. (NRC003-0406).

The Staff admits that during the time period of August 1, 2001-September 4, 2001, Mr. Dale R. Wuokko was the Licensing Supervisor of Davis-Besse's Regulatory Affairs. (NRC002-1606).

REQUEST FOR ADMISSION 2

At all times relevant, Dale Miller and Dale Wuokko supervised Regulatory Affairs' Contractor Rodney M. Cook.

RESPONSE

The NRC Staff ADMITS that during the time period of August 1, 2001-September 4, 2001, Mr. Rodney M. Cook was working under contract to Regulatory Affairs and Mr. Miller was responsible for Mr. Cook's contract. (NRC003-0423-0424). Mr. Cook worked for Mr. Miller. (NRC002-1474).



The NRC Staff DENIES that during the time period of August 1, 2001-September 4, 2001, Mr. Cook was supervised by Mr. Dale Wuokko. Although Mr. Cook would do work for Mr. Wuokko, Mr. Miller was responsible for Mr. Cook's contract and Mr. Cook worked for Mr. Miller. (Exhibit 113 at 23-24 (NRC003-0423-MRC003-0424); Exhibit 114 at 13 (NRC002-1613); Exhibit 108 at 31 (NRC002-1474)).

### REQUEST FOR ADMISSION 3

At all times relevant, Frank W. Kennedy was a member of the Regulatory Affairs Licensing unit.

### RESPONSE

Admitted. During the time period of August 1, 2001-September 4, 2001, Mr. Frank W. Kennedy was a member of the Davis-Besse's Regulatory Affairs unit and worked for Mr. Wuokko. (Exhibit 113 at 19-20 (NRC003-0419-NRC003-0420), Exhibit 113 at 24 (NRC003-0424)).

### REQUEST FOR ADMISSION 4

At all times relevant, David H. Lockwood was the Manager of Regulatory Affairs.

### RESPONSE

Admitted. During the time period of August 1, 2001-September 4, 2001, Mr. David H. Lockwood was the Davis-Besse Manager of Regulatory Affairs. (Exhibit 112 at 10 (NRC002-1699)).

### REQUEST FOR ADMISSION 5

At all times relevant, Lonnie W. Worley was the Director of Nuclear Services

RESPONSE

Admitted. During the time period of August 1, 2001-September 4, 2001, Mr. Worley was the Davis-Besse Director of Nuclear Services. (NRC004-1158; Exhibit 27 at NRC004-0423).

REQUEST FOR ADMISSION 6

On July 23, 2001, the NRC's Stephen P. Sands called Dale Wuokko to advise "of an upcoming meeting between the NRC and NEI regarding the NRC expectations for licensee response" to the forthcoming Bulletin. (DLM 000001).

RESPONSE

The NRC Staff admits that DLM 000001 states: "SPSands called DRWuokko and advised him of an upcoming meeting between the NRC and NEI regarding the NRC expectations for licensee response to the forthcoming NRC bulletin on circumferential cracking of reactor pressure vessel head penetration nozzles."

REQUEST FOR ADMISSION 7

Dale Wuokko's notes of Mr. Sands July 23, 2001 telephone call stated that Mr. Wuokko would inform the cognizant engineers in Licensing and Engineering of the upcoming meeting about the Bulletin. (DLM 000001).

RESPONSE

The NRC Staff admits that DLM 000001 states: "DRWuokko stated that he would inform the cognizant engineers in Licensing and Engineering, and inform management of the upcoming meeting."

REQUEST FOR ADMISSION 8

On July 24, 2001, Dale Wuokko notified David Lockwood of the upcoming NRC meeting to discuss the Bulletin, and sent a copy to Frank Kennedy. (NRC020-3095).

RESPONSE

The NRC Staff admits that document NRC020-3095, an e-mail dated July 24, 2001 to Mr. Lockwood with carbon copy to Mr. Kennedy, states: "The NRC is holding a meeting on Thursday July 2 10:00-12:00 to discuss this bulletin and have (sic) taken step to ensure Davis-Besse, as one of the 10 most susceptible plants, is aware of this meeting and the opportunity to attend." The NRC Staff notes that the e-mail also discusses who from the Davis-Besse organization should attend.

REQUEST FOR ADMISSION 9

On July 31, 2001, the NRC informed Dale Wuokko that the Bulletin would be issued no sooner than August 3 and no later than August 8, 2001. (NRC021-0874).

RESPONSE

The NRC Staff admits that on July 31, 2001, Dale Wuokko sent an e-mail to David Lockwood, Frank Kennedy, Andrew Siemaszko, David Geisen, Praseon Goyal, Kendall Bryd, and Theo Swim, stating: "Today I asked the NRC DBNPS Project Manager when the subject bulletin [NRC Bulletin on RVHP Nozzle Cracking] will be issued. He checked with Jake Zimmerman, Lead NRC Project Manager for this issue, and he expects the bulletin to be issue no sooner than Friday August 3 and no later than Wednesday August 8."

REQUEST FOR ADMISSION 10

On August 3, 2001, Frank Kennedy initiated Condition Report 01-2012, and assigned Regulatory Affairs' Licensing unit as the Bulletin "owner," with input for the response provided by the Alloy 600 Team, Design Engineering (DEMS), System Engineer (SYME), and Quality Control (QC). (DLM 000001-DLM 000005).

RESPONSE

The NRC Staff admits that “Kennedy, F” is identified as the “Originator” of Condition Report 01-2012.

The NRC Staff DENIES that Condition Report 01-2012 assigned Regulatory Affairs’ Licensing unit as the Bulletin “owner,” with input for the response provided by the Alloy 600 Team, Design Engineering, System Engineering, and Quality Control. Condition Report does not assign Regulatory Affairs’ Licensing unit as the Bulletin “owner,” rather, it *recommends* that Regulatory Affairs be assigned as the owner of the Condition Report, with input by the Alloy 600 Team, DEMS, SYME, and QC.

REQUEST FOR ADMISSION 11

On August 7, 2001, Dale Wuokko, Frank Kennedy’s Supervisor, approved Condition Report 01-2012. (DLM 000002).

RESPONSE

Objection. Whether or not Mr. Wuokko approved CR 01-2012 on August 7, 2001 is not within the knowledge of the NRC Staff. The referenced document is not signed or approved by a named individual.

REQUEST FOR ADMISSION 12

On August 8, 2001, Prasoon Goyal sent an e-mail memo to Stephen Hunt of Dominion Engineering, Inc., stating that Davis-Besse’s “last inspection was partial and detected boric acid accumulation which was attributed to a CRDM flange leak.” (NRC008-0993-NRC008-0998).

RESPONSE

The NRC Staff admits that on August 8, 2001, Mr. Goyal sent Mr. Hunt an e-mail stating that Davis-Besse had sent Mark Fleming (also of Dominion Engineering) a fax on July 16, 2001

stating that Davis-Besse's "last inspection was partial and detected boric acid accumulation which was attributed to a CRDM flange leak." The NRC Staff notes that the quotation of Mr. Goyal is from his e-mail (NRC008-0993), and is not included in the memo attached to the e-mail (NRC008-0995-NRC008-0998).

#### REQUEST FOR ADMISSION 13

Prasoon Goyal sent a copy of his August 8, 2001 e-mail in which he stated that "the last inspection was partial and detected boric acid accumulation which was attributed to a CRDM flange leak" to Andrew Siemaszko, Mark McLaughlin, Frank Kennedy, Theo Swim, John Cunnings, and Charles Daft. (NRC008-0993-NRC008-0998).

#### RESPONSE

The NRC Staff admits that Mr. Goyal sent carbon copies of his e-mail to Stephen Hunt of Dominion Engineering transmitting his comments on the MRP draft response to NRC Bulletin 2001-01 to Messrs. Siemaszko, McLaughlin, Kennedy, Swim, Cunnings, and Daft.

#### REQUEST FOR ADMISSION 14

On August 8, 2001, Frank Kennedy forwarded to Rodney Cook a copy of Prasoon Goyal's August 8, 2001 e-mail that "the last inspection was partial and detected boric acid accumulation which was attributed to a CRDM flange leak." (NRC008-0993-NRC008-0998).

#### RESPONSE

The NRC Staff admits that Mr. Kennedy forwarded to Mr. Cook a copy of Mr. Goyal's August 8, 2001 e-mail (NRC008-0993). The NRC Staff again notes that the quotation "the last inspection was partial and detected boric acid accumulation which was attributable to a CRDM flange leak" is from Mr. Goyal's e-mail and not the attached MRP draft response to NRC Bulletin 2001-01.

REQUEST FOR ADMISSION 15

On August 9, 2001, Rodney Cook forwarded to Dale Wuokko a copy of Prasoon Goyal's August 8, 2001 e-mail that "the last inspection was partial and detected boric acid accumulation which was attributable to a CRDM flange leak." (NRC008-0993-NRC008-0998).

RESPONSE

The NRC Staff admits that on August 9, 2001, Mr. Cook forwarded a copy of Prasoon Goyal's August 8, 2001 e-mail stating that, "the last inspection was partial and detected boric acid accumulation which was attributed to a CRDM flange leak." (NRC008-0993). The NRC Staff again notes that this quotation is from Mr. Goyal's e-mail (NRC008-0993), not the attached MRP draft Response to NRC Bulletin 2001-01 (NRC008-0995-0998).

REQUEST FOR ADMISSION 16

Davis-Besse's August 9, 2001 Bulletin Response Action Plan gave Bulletin Response assignments to Frank Kennedy, Prasoon Goyal, Andrew Siemaszko, and Rodney Cook. (NRC020-3011-NRC020-3012).

RESPONSE

The NRC Staff Admits that the August 9, 2001, revision of "Bulletin 01-01 Action Plan" assigns tasks to Messrs. Kennedy, Goyal, Siemaszko, and Cook.

REQUEST FOR ADMISSIONS 17

On August 9, 2001, Dale Wuokko e-mailed Davis-Besse's Bulletin Response Action Plan to Director Lonnie W. Worley, with a copy to Frank Kennedy and Rodney Cook. (NRC020-3010-NRC030-3012).

RESPONSE

Admitted.

REQUEST FOR ADMISSIONS 18

By e-mail dated August 9, 2001, Prasoon Goyal sent a draft Bulletin response that "reworded the first sentence of the 1998 inspection results," to Andrew Siemaszko, Frank Kennedy, John Cummings, and Theo Swim. (NRC007-1766-NRC007-1768).

RESPONSE

The NRC Staff admits that on August 9, 2001, Prasoon Goyal sent an E-mail to Messrs. Siemaszko, Kennedy, Cunnings, and Swim, with the subject line: "Bulletin response," stating that he had "reworded the first sentence of the 1998 inspection results." What Mr. Goyal meant by "I have reworded the first sentence of the 1998 inspection results," which appears at NRC007-1767, is not within the knowledge of the NRC Staff. The NRC Staff notes that the first sentence of the description of the 1998 inspection results reads, "The inspection showed an uneven layer of boric acid scattered over the head." The NRC Staff also notes that the description of the 1998 inspection states: "The head cleaning was limited by the location and opening size of the weep holes. The head was cleaned as best as it could be considering the dose and method."

REQUEST FOR ADMISSIONS 19

On August 9, 2001, Frank Kennedy forwarded a copy of Prasoon Goyal's August 9, 2001 e-mail and draft response to Rodney Cook. (NRC007-1766-NRC007-1768).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 20

Dale Miller did not attend a Bulletin response meeting on August 11, 2001.

RESPONSE

Objection. Whether or not Mr. Miller attended a Bulletin response meeting on August 11, 2001, is outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 21

On August 11, 2001, Dale R. Wuokko did not e-mail to Mr. Miller an updated "Action Plan" resulting from "this morning's meeting and work completed today." Mr. Wuokko sent the e-mail and attached, updated Bulletin Response Action Plan to Prasoon Goyal, Lonnie Worley, John Messina, Frank Kennedy, David Lockwood, Steven Moffitt, David Geisen, Andrew Siemaszko, John Cunnings, Charles Steagal, Theo Swim, and Rodney Cook, with a copy to Michael Leisure. (NRC021-0876-NRC021-0878).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 22

On August 13, 2001, Rodney Cook asked Prasoon Goyal, via e-mail, to confirm Mr. Goyal's and his assignments for Bulletin Items 1.b and 1.e, so that Mr. Cook could have "Frank update the Action Plan." (NRC007-2678).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 23

On August 14, 2001, Dale Wuokko sent an "updated" Bulletin Action Plan to Rodney Cook, Frank Kennedy, Prasoon Goyal, Andrew Siemaszko, and David Lockwood, with a copy to Michael Leisure. (NRC020-2936- NRC020-2939).

RESPONSE

Admitted.



REQUEST FOR ADMISSION 24

On August 14, 2001, Stephen Hunt of Dominion Engineering, Inc. sent to Prasoon Goyal a key excerpt applicable to Davis-Besse from a draft generic industry plan, with a suggested basis for not performing an inspection before the end of 2001. (NRC010-0379- NRC010-0380).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 25

The August 14, 2001 Davis-Besse key excerpt forwarded to Prasoon Goyal by Stephen Hunt (NRC010-0379- NRC010-0380) included the following language about Davis-Besse's 2000 discovery of significant boric acid, and cleanup leaving the head in good condition for a 2002 inspection:

Davis-Besse performed an inspection of the vessel head in March of 2000. While this inspection showed no evidence of leakage from PWSCC cracks in CRDM nozzles, the inspection sensitivity was affected by a significant amount of boric acid on the vessel head resulting from a CRDM flange gasket leak. As part of the cleanup of the boric acid from the flange leak the head was left in good condition for the scheduled inspection in April 2002. The utility will watch the results of the Fall 2001 inspection at TMI-1 and Crystal River 3 to determine if this response should be modified as a result of the inspections at these B&W plants.

RESPONSE

Admitted.

REQUEST FOR ADMISSION 26

On August 14, 2001, Dale Miller received his first copy of the NRC Bulletin. (DLM 0000018-20).

RESPONSE

Objection. Whether Mr. Miller received his first copy of the NRC Bulletin on August 14, 2001, is outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 27

On August 17, 2001, Dale Miller began his first Bulletin-related assignment at Director Lonnie Worley's request, to contact other utilities to assemble a response group. (DLM 0000039-40; DLM 0000042-4; DLM 0000046-51).

RESPONSE

Denied.

REQUEST FOR ADMISSION 28

By e-mail dated August 17, 2001 at 2:58 p.m., Dale Miller forwarded to Rodney Cook Dominion Resources Services' draft response to the Bulletin. (DLM 0000041).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 29

On August 20, 2001, Rodney Cook e-mailed the latest draft of the Bulletin, "Serial Draft 8-18-01.doc". He sent his e-mail draft to Prasoon Goyal, Frank Kennedy, and Mark McLaughlin, with copies to Dale Wuokko, Dale Miller, and David Lockwood. (DLM 0000054-70).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 30

In his August 20, 2001 e-mail, Rodney Cook stated that he planned on getting his new draft "out into Green Sheet review today." (DLM 0000054).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 31

By e-mail dated August 20, 2001, Rodney Cook wrote to Dale Wuokko about the draft response to the Bulletin. Mr. Cook stated: "The letter changed a lot from the one I originally had last week," and the draft "e-mailed earlier does not follow any template, but follows the Bulletin. I had a copy of Dominion's draft response and used it as a guide. Just some background for you." (NRC007-2279).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 32

On August 22, 2001, Praseon Goyal forwarded to Rodney Cook the revisions made by Stephen Fyfitch of Framatome to "Davis-Besse BulletinItem [sic] 3 response Draft2.doc". (NRC008-0921-NRC008-0939). Mr. Goyal also sent copies to Frank Kennedy, Andrew Siemaszko, Mark McLaughlin, and Charles Daft. (NRC008-0921-NRC008-0939).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 33

On August 22, 2001 at 3:42 p.m., Rodney Cook e-mailed a "new draft of Serial 2731" with the subject line "Serial 2731 revisited." Mr. Cook wrote that most of the changes "are editorial," but he was including "Framatome's write-up that kinda [sic] justifies why we are okay." (NRC008-0189-NRC008-0213).

RESPONSE

Denied to the extent the request for admission asserts that the e-mail was sent at 3:42 p.m. The request is otherwise Admitted.

REQUEST FOR ADMISSION 34

Rodney Cook's "Serial 2731 revisited" e-mail dated August 22, 2001, attached a draft Bulletin response identified as "Draft 8-22-01.doc". (NRC008-0189-NRC008-0213).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 35

Rodney Cook e-mailed "Draft 8-22-01.doc" to Mark McLaughlin, Prasoon Goyal, Dale Wuokko, Dale Miller, and Andrew Siemaszko, with a copy to Frank Kennedy.

RESPONSE

Admitted.

REQUEST FOR ADMISSION 36

On August 23, 2001 at 10:29 a.m., Dale Miller sent an agenda via e-mail, for the first utilities group teleconference on August 23, 2001 at 1:00 p.m., "to discuss the response to NRC Bulletin 2001-01". Mr. Miller sent his e-mail to representatives from other utilities and to FENOC's Dale Wuokko, Rodney Cook, Frank Kennedy, Mark McLaughlin, Prasoon Goyal, Charles Daft, David Lockwood, Lonnie Worley, Diana Chambers, and Cheryl Lyons. (DLM 00000238).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 37

Dale Miller's handwritten "Agenda" notes reflect his confusion as to why Davis-Besse was performing a "qualified visual inspection" in 13RFO, yet two other utilities were performing an "effective visual inspection." (DLM 00000175-177).

RESPONSE

Objection. Whether or not the requested admission is true is outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 38

"8/23/01 Bulletin 2001-01 Conference Call" notes state that the NRC told a utility in a "conference call that they meant to say 'effective inspection'". A second utility reported that it would "be using 'qualified' in response" to the Bulletin. (DLM 00000180).

RESPONSE

The NRC Staff admits that the referenced document states: "Dominion- NRC stated in a conference call that they mean to say 'effective inspection' . . . Oconee will be using qualified in response."

REQUEST FOR ADMISSION 39

On August 23, 2001, Rodney Cook sent an "advanced [sic] copy of Serial 2731" to Vice President Guy Campbell, Lonnie Worley, Steven Moffitt, and John Messina, with copies to their assistants. (NRC005-3893).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 40

On August 27, 2001, Rodney Cook sent an e-mail with the subject "Serial 2731 8-27-01 Version 1b" to Mark McLaughlin, Prasoon Goyal, Andrew Siemaszko, Frank Kennedy, Dale Miller, Dale Wuokko, and David Lockwood. (NRC007-1728).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 41

Rodney Cook's August 27, 2001 e-mail about Version 1b stated: "Well, here's another version. It deleted the reference to 90% of the nozzles being inspected during the 2000 inspection, . . . to ensure that we state that not all of the head was accessible or inspected for inspection for whatever reason . . . and incorporates a discussion of the review of the 1998 and 2000 video tapes since May 2001 . . . ." (NRC007-1727-NRC007-1728).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 42

On August 28, 2001 at 2:52 p.m., Rodney Cook sent an e-mail to FENOC's Dennis Weakland with copies to Prasoon Goyal and Dale Miller, about the "Davis-Besse Bulletin 2001-01 Draft Response." Mr. Cook wrote he attached a "draft of our response. This is the iteration that is presently in final review." He attached "Serial 2731 8-28-01 Version 1e.pdf." (DLM 00000334-359).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 43

On August 28, 2001, at 3:07 p.m., Rodney Cook sent an e-mail to Mark McLaughlin on the subject of "Serial 2731 Version 1e," stating the version "[s]hould be the last change." Mr. Cook asked Mr. McLaughlin to sign the green sheet, have Messrs. Missig, Nelson, and Messina sign it, and "see about getting it back to me today if possible . . . ." (NRC001-1864).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 44

On August 28, 2001, Prasoon Goyal signed Davis-Besse's review and approval report form for the Bulletin response, as the responsible engineer-mechanical design. (NRC027-1692).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 45

On August 28, 2001, Dale Wuokko gave his review and approval consent to the Bulletin response "per telecon" as "Supervisor, DB Licensing." (NRC027-1692).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 46

On August 29, 2001, Rodney Cook sent a new version of Serial 2731 called "New Expansion discussion" to Mark McLaughlin, Andrew Siemaszko, Prasoon Goyal, David Geisen, Dale Miller, and David Lockwood. Mr. Cook wrote that the new version incorporated "the discussion similar to ANO's [to] provide a supplement 60 days prior to the outage . . . based on experience at other utilities." Mr. Cook noted [t]he changes are on pages 5 and 7, with a new paragraph." (NRC007-1763).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 47

On August 29, 2001, Rodney Cook drafted a Bulletin response he identified as "Serial 2731 8-29-01 Version 1f-ANO.PDF". (NRC007-2442-NRC007-2466).

RESPONSE

The NRC Staff admits that document NRC007-2442-NRC007-2444 reflects that a draft bulletin response titled "Serial 2731 8-29-01 Version 1f-ANO-PDF" was drafted by Cook. Whether the response was drafted on August 29, 2001, is outside the knowledge of the NRC Staff. The NRC Staff admits that the document states "8-29-01 Version" in the title of the document.

REQUEST FOR ADMISSION 48

On August 29, 2001, Rodney Cook circulated to Dale Miller a new "Serial 2731 8-29-01 Version 1g-ANO.PDF." (DLM 00000417-442).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 49

On August 30, 2001, Dale Miller signed FENOC's review and approval form for the Bulletin response as "Supervisor DB compliance." (NRC027-1692).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 50

On August 30, 2001, Lonnie Worley signed Davis-Besse's review and approval form for the Bulletin response as Director, Nuclear Services. (NRC027-1696).

RESPONSE

Admitted.



REQUEST FOR ADMISSION 51

On or before September 4, 2001, Vice President Guy G. Campbell made handwritten comments on a draft of Serial No. 2731. (NRC005-3701-NRC005-3725).

RESPONSE

Objection. Whether or not Mr. Campbell made notes on a draft of Serial No. 2731 is outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 52

On September 4, 2001, Rodney Cook incorporated Vice President Campbell's handwritten comments into a new Bulletin response "Draft 9-4-01, Version 1k-GGC comments.doc." (NRC007-0681-NRC007-0706).

RESPONSE

The NRC Staff admits that the comments written on NRC005-3701-NRC005-3725 appear to have been incorporated in the draft numbered NRC007-0681-NRC007-0706. The NRC Staff further admits that the title of this draft includes the phrase "Draft 9-4-01." Whose comments were incorporated is outside the knowledge of the NRC Staff. The date of the incorporation of the comments is also outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 53

On September 4, 2001, David Lockwood signed Davis-Besse's review and approval form for the Bulletin response as Manager, Regulatory Affairs. (NRC027-1692).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 54

On September 4, 2001, Vice President Guy G. Campbell signed FENOC's review and approval report for the Bulletin response. (NRC027-1692).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 55

FENOC's review and approval report, Block 14, provides: Initiator checks and/or enters the desired reviewer(s). The technical accuracy of a response to the NRC is the responsibility of the Director and Management individual assigned the action." (NRC027-1697).

RESPONSE

The NRC Staff admits that a legend attached to FENOC's review and approval form indicates: "Block 14 Initiator checks and/or enters the desired reviewer(s). The technical accuracy of a response to the NRC is the responsibility of the Director and Management individual assigned the action." The NRC Staff DENIES that this language is found in Block 14.

REQUEST FOR ADMISSION 56

Condition Report 01-2012's Corrective Action section dated September 5, 2001 stated that Rodney Cook completed the Bulletin response by September 4, 2001, and Dale Wuokko entered approval for the "implementing organization." (DLM 000005).

RESPONSE

Objection. Whether or not the requested admission is true is outside the knowledge of the NRC Staff. The referenced document did not contain the complete Condition Report.

REQUEST FOR ADMISSION 57

Dale Miller did not write or add any words, sentences, or paragraphs to any of the Bulletin response drafts generated during August and September 2001.

RESPONSE

Objection. Whether or not the requested admission is true is outside the knowledge of the NRC Staff.

REQUEST FOR ADMISSION 58

Because Dale Miller did not begin his utilities group assignment until August 17, 2001, and did not receive a Bulletin response draft until August 20, 2001, he had to rely upon the engineers assigned Bulletin response action in early August 2001, to provide complete and accurate information.

RESPONSE

Denied. The NRC Staff denies that Mr. Miller did not begin his utilities group assignment until August 17, 2001.

Objection. Whether or not Mr. Miller first received a Bulletin response draft August 20, 2001 is outside the knowledge of the NRC Staff.

Denied. The NRC Staff denies that Mr. Miller had to rely upon the engineers assigned to the Bulletin response action in early August 2001 to provide complete and accurate information.

REQUEST FOR ADMISSION 59

Dale Miller had no background or experience in the subject of RPV head inspections or nozzle cracking.

RESPONSE

Denied. The NRC Staff denies that Mr. Miller had no background or experience in the

subject of RPV head inspections or nozzle cracking.

REQUEST FOR ADMISSION 60

On October 17, 2001, Dale Miller signed and dated the Review and Approval Report form for Serial No. 2735 (DLM 00000484). Serial No. 2735 provided updated and additional information in support of the basis for Davis-Besse's continued safe operation until its next refueling outage. (DLM 00000485-558).

RESPONSE

The Staff admits that Mr. Miller's initials appear on the Review and Approval Report form for Serial No. 2735. Which date Mr. Miller signed the form is outside the knowledge of the NRC Staff. The Staff DENIES that Serial No. 2735 provided updated and additional information in support of the basis for Davis-Besse's continued safe operation until its next refueling outage.

REQUEST FOR ADMISSION 61

On October 4, 2002, Rodney Cook testified that he and Prason Goyal "discussed that Arkansas had been inspecting their head through the mouse holes for several years." (NRC002-1463).

RESPONSE

Admitted.

REQUEST FOR ADMISSION 62

David Geisen asked Andrew Siemaszko to "procure the same video rig used by ANO [Arkansas Nuclear One power plant] to inspect their head." (NRC025-1014).

RESPONSE

The Staff admits that document NRC025-1014 is a handwritten note which bears the

signature of David Geisen and the document states "I've asked Andrew Sie? To procure the same video rig used by ANO to inspect their head."

#### REQUEST FOR ADMISSION 63

David Geisen had made the purchase request for "RV Head Inspection- Everest VIT Video Probe System, ROVVER System" on or before June 26, 2001. (NRC024-1097).

#### RESPONSE

Whether or not David Geisen made the above purchase request is outside the knowledge of the NRC Staff. The NRC Staff admits that an email bearing the subject title "RV Head Inspection- Everest VIT Video Probe Systems, ROVVER System" was sent on June 26, 2001.

#### REQUEST FOR ADMISSION 64

On September 2, 2004, Dale Miller told OI Senior Special Agent Joseph M. Ulie, OI Special Agent Michelle F. Janicki, Senior Reactor Inspector James A. Gavula, and Department of Justice representatives that he had looked up the word 'impediment' in preparation for his October 22, 2002 OI interview.

#### RESPONSE

Objection. The Staff can neither truthfully admit nor deny the request for admission because the Staff, as a party, cannot properly obtain information about the communications that occurred during the September 2, 2004, interview with Miller. All NRC employees with knowledge of, or access to, the contents of that interview obtained that knowledge or access for the purpose of assisting the Department of Justice (DOJ) in a grand jury investigation. These NRC employees have been advised by DOJ that they cannot properly reveal the contents of that interview without being in danger of violating the grand jury secrets rule found in Federal Rule of Criminal Procedure 6(e). Therefore, the Staff, as a party, cannot obtain the information

necessary to answer the requested admission, and objects to the request to the extent that it seeks to compel from select NRC employees the disclosure of information that might violate the grand jury secrets rule.

Respectfully submitted,

***/RA by Mary C. Baty/***

Sara E. Brock  
Mary C. Baty  
Michael A. Spencer  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 30<sup>th</sup> day of June, 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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	Michael A. Spencer
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Mail Stop: O-15 D21 Washington, D.C. 20555-0001
Telephone Number:	(301) 415-4073
Facsimile:	(301) 415-3725
E-mail Address:	MAS8@nrc.gov
Admissions:	District of Columbia
Name of Party:	NRC Staff

Respectfully submitted,

*/RA/*

Michael A. Spencer  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 30<sup>th</sup> day of June, 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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSES AND OBJECTIONS TO DALE L. MILLER'S DISCOVERY REQUESTS DATED JUNE 1, 2006" and "NOTICE OF APPEARANCE" for Michael A. Spencer in the above captioned proceeding have been served on the following persons by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (\*); and by electronic mail as indicated by a double asterisk (\*\*) on this 30th day of June, 2006.

Michael C. Farrar \* \*\*  
Administrative Judge, Chair  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555-0001  
E-Mail: [mcf@nrc.gov](mailto:mcf@nrc.gov)

Nicholas G. Trikouros \* \*\*  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555-0001  
E-Mail: [ngt@nrc.gov](mailto:ngt@nrc.gov)

E. Roy Hawkens \* \*\*  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555-0001  
E-Mail: [erh@nrc.gov](mailto:erh@nrc.gov)

Office of the Secretary \* \*\*  
Attn: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Adjudicatory File \*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555

Jane G. Penny \* \*\*  
Thomas W. Scott\* \*\*  
Killian & Gephart, LLP  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108-0886  
E-mail: [jpenny@killiangephart.com](mailto:jpenny@killiangephart.com)  
[tscott@killiangephart.com](mailto:tscott@killiangephart.com)

Office of Commission Appellate Adjudication \*  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555



Jonathan Rund, Law Clerk  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555

*/RA/*

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Mary C. Baty  
Counsel for NRC Staff