

## UNITED STATES NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 1, 2006

Jay Gutierrez Morgan Lewis & Bockius LLP 1111 Pennsylvania Avenue, NW Washington, DC 20004

Dear Mr. Gutierrez:

This letter recaps our phone call of October 31, 2006. In that call, I informed you that the NRC Staff has received a Freedom of Information Act (FOIA) request for many of the exhibits attached to the August 2003, Office of Investigations Report of Investigation (OI Report) into the Davis-Besse head degradation event. I also informed you that the Staff is attempting to comply with this request without inadvertently making public any proprietary documents, but that the Staff was concerned that it had trouble in precisely determining which documents and parts of documents fell under the requests for withholding submitted by FirstEnergy on behalf of itself and certain contractors (Withholding Requests).

In the phone call, we agreed that the Staff would mail to you the OI Report exhibits so that a more precise determination of withholding could be made. More specifically, we agreed upon the following: (1) that the "publicly available" documents that the Staff has preliminarily determined not to fall under the Withholding Requests would be reviewed to see if they should be withheld and (2) that the "proprietary" documents that the Staff has preliminarily determined to fall under the Withholding Requests would be reviewed to see if they should not be withheld. The Staff, therefore, is sending to you as enclosures to this letter electronic versions of the OI Report exhibits so that FirstEnergy can make the appropriate determinations. The OI Report exhibits are contained on two CDs, a "publicly available" CD and a "proprietary" CD.

According to our conversation, you will attempt to make these determinations as quickly as you can, coordinating with the different interested parties, and a Morgan Lewis attorney will contact me ten business days from now with either their position on the documents or an update on the progress of the review. In order to expedite FirstEnergy's review, the Staff is also enclosing an index of the OI Report exhibits, which includes the Bates Numbers of the exhibits, a brief document description, and an indication of whether exhibits are proprietary in their entirety. There are documents with proprietary subparts, however, that are not marked proprietary in the indexes.

As for the files, themselves, the filenames of the electronic versions identify the documents either by their exhibit number (e.g., OI Report Exhibit 146) or by their beginning Bates Number (e.g., NRC001-0001). It should be noted that many of the exhibits are comprised of a document with attachments, which can appear as several files on the CD. For example, the

<sup>&</sup>lt;sup>1</sup> The submissions referred to are three letters from Jay Gutierrez, counsel for FirstEnergy, to Sara Brock, Counsel for the NRC Staff, on January 31, February 7, and March 16, 2006.

OI Report exhibits index may identify an exhibit as having Bates range NRC005-0001 to 0143, but this could be comprised of seven separate electronic files, with five on the "publicly available" CD and two on the "proprietary" CD.

A related issue, but one not subject to the present FOIA request and not discussed in our phone call, concerns generally the sufficiency of the Withholding Requests with regard to identifications of documents or justifications for withholding. The Staff is reviewing those identifications and justifications and will contact FirstEnergy in the future if the Staff has any issues with them. If you have any questions or concerns, contact me at 301-415-4073 or at mas8@nrc.gov.

Sincerely,

Michael Spencer

Counsel for the NRC Staff

Enclosure: As stated

## **Index of OI Report Exhibits – Enclosure 1**

(sorted first by proprietary designation, then by beginning bates number)

Bates - Begin	Bates - End	Proprietary	Full Name	Adams Accession Number
No Bates Number	No Bates Number		Exhibit 140 Inspection Media Review	
NRC001-0001	NRC001-0003		EXhibit 81- Nuclear Quality Assessment Audit Package AR-OUTAG-01	
NRC001-0004	NRC001-0157		EXhibit 45- Interview Of Peter Mainhardt	
NRC001-0158	NRC001-0192		EXhibit 259 Interview Of Villines	ML052690238
NRC001-0193	NRC001-0262		EXhibit 46 - Interview With Walt Molpus	
NRC001-0263	NRC001-0375		EXhibit 82 Interview Of Ackerman	ML052690271
NRC001-0387	NRC001-0387		EXhibit 84 Report Of Interview Of Willoughby	ML052690279
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NRC001-0456	NRC001-0479		EXhibit 78 - Work Order 00-001846-000, Clean Boron Accumulation From Reactor Head	
NRC001-0481	NRC001-0508		EXhibit 43 BACC Training Records	
NRC001-0509	NRC001-0538		EXhibit 77 - Radiation Work Permit 2000-5132, Clean Boric Acid From RX Head	
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NRC001-0597	NRC001-0614		EXhibit 60 CR 1999-1300, Analysis Of Filter Deposits	
NRC001-0615	NRC001-0618		EXhibit 65 Memorandum From Dille Re: Particulates In Containment	
NRC001-0619	NRC001-0626		EXhibit 121 PCAQR 94-0912, Results Of CRDM Leakage Video Inspection	
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NRC001-0871	NRC001-0937		EXhibit 18 Letter From Worley To NRC Re: Additional Information In Response To GI 97-01	
NRC001-0938	NRC001-0940		EXhibit 150 E-mail From Hiser Re: Staff Assessment Of NRC 2001-01 Responses	
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NRC001-1259	NRC001-1346		EXhibit 238 Interview Of Schroeder	ML052710505
NRC001-1347	NRC001-1390		EXhibit 195 Interview Of Killian	ML052710505
NRC001-1391	NRC001-1471		EXhibit 75 Interview Of Cobbledick	ML052710507
NRC001-1472	NRC001-1517		EXhibit 28 Interview Of Hartigan	ML052710508
NRC001-1530	NRC001-1530		EXhibit 265 Report Of Interview Of Currence	ML052710510
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NRC001-1532	NRC001-1628		EXhibit 76 Interview Of Bergendahl	
NRC001-1629	NRC001-1664		EXhibit 5- Potential Condition Adverse To Quality Report 96-551	
NRC001-1713	NRC001-1714		EXhibit 218 E-mail From Lockwood Re: Procurement Of Nuclear Fuel	
NRC001-1751	NRC001-1751		EXhibit 151 E-mail From Miller Re: NRC Bulletin And Inspection	ML052710518
NRC001-1769	NRC001-1863		EXhibit 50 - Interview Of James Harris	
NRC001-1864	NRC001-1890		EXhibit 101 E-mail From Cook Re: Serial 2731 Version 1e	

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NRC001-1891	NRC001-1897		EXhibit 204 E-mail From Cook Re: Latest Draft Of Serial 2735	
NRC001-1898	NRC001-1903		EXhibit 196 E-mail From Cook Re: Serial 2735, Supplemental Info	
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NRC002-0115	NRC002-0116		EXhibit 210 Documentation Of Telephone Calls And E-Mails Between Pickett And Wuokko	
NRC002-0122	NRC002-0127		EXhibit 56 WO 99-000356-001, CRD Motor Flanges Need Inspection During May Mini-Outage	
NRC002-0136	NRC002-0139		EXhibit 162 Tech Spec White Paper On Pressure Boundary Leakage	
NRC002-0140	NRC002-0140		EXhibit 175 Fax Cover Sheet From Lockwood Re: NRC Bulletin 2001-	

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NRC002-0141	NRC002-0141		EXhibit 187 E-mail From Lessy Re: Contact With Commissioner Dycus' Office (Lessy's Comments Privileged And Redacted)	
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NRC002-0143	NRC002-0143		EXhibit 23 E-mail From Goyal Re: Oconee Feedback	
NRC002-0144	NRC002-0147	<u> </u>	EXhibit 229 NRC Subpoena	
NRC002-0148	NRC002-0149		EXhibit 170 E-mail From Wuokko Re: Insights Into NRC's Position	
NRC002-0150	NRC002-0152		EXhibit 24 Memorandum From Goyal To Swim Re: Trip Report - BWOG Materials Committee Meeting	
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NRC002-0159	NRC002-0184		EXhibit 202 E-mail From Rishel With Risk Assessment For CRDM Nozzle Cracks	
NRC002-0185	NRC002-0191		EXhibit 203 E-mail From Cook Re: Draft Supplemental Response	
NRC002-0200	NRC002-0226		EXhibit 207 E-mail From Byrd Re: Risk Assessment Of CRDM Nozzle Cracks	
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NRC002-0283	NRC002-0316		EXhibit 257 Interview Of Tabbert	ML052710530
NRC002-0317	NRC002-0338		EXhibit 262 Interview Of Dennis A. Liska	
NRC002-0339	NRC002-0365		EXhibit 226 Interview Of Daft	ML052710531

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NRC002-0366	NRC002-0426		EXhibit 258 Interview Of Tipton	ML052710532
NRC002-0427	NRC002-0430		EXhibit 184 E-mail From Mclaughlin Re: Photo Of The Crystal River VHP Indication	
NRC002-0431	NRC002-0431		EXhibit 168 E-mail From Wuokko Re: Bulletin 2001-01	
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NRC002-1802	NRC002-1863		EXhibit 36 - Interview Of Joseph Williams Rogers	
NRC002-1864	NRC002-1942		EXhibit 253 Interview Of Randall Lee Rossomme	ML052720393
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NRC003-0262	NRC003-0263		EXhibit 71 Report Of Interview Of Hengge	
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NRC003-1051	NRC003-1123		Exhibit 249 Interview Of Lewis	ML052770412
NRC003-1137	NRC003-1137		EXhibit 156 E-mail From Wuokko Re: Oconee Meeting Notes	ML052720403

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NRC003-1190	NRC003-1210		EXhibit 213 Draft Of 2732	
NRC003-1211	NRC003-1211		EXhibit 211 E-mail From Wuokko Forwarding Pickett's October 17, 2001, E-mail	
NRC003-1282	NRC003-1282		EXhibit 63 Telephone Call Documentation By Wuokko Re: License Amendment Request	
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NRC004-0290	NRC004-0316		EXhibit 240 Interview Of Bunker	

Adams Accession Number	
Full Name	EXhibit 27- Interview Of Prasoon Goyal
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			Office	
NRC017-1366	NRC017-1367		EXhibit 172 Miller's Handwritten Notes Re: Various Industry/Plant Talks	
NRC017-1368	NRC017-1369		EXhibit 176 Miller's Handwritten Notes Re: Telecon Prep Mtg	
NRC017-1380	NRC017-1383		EXhibit 182 Miller's Handwritten Notes From NRC Telecon	
NRC017-1384	NRC017-1401		EXhibit 183 Miller's Handwritten Notes	
NRC017-1465	NRC017-1487		EXhibit 99 E-mail From Cook Re: Goyal's And Daft's Comments Incorporated	
NRC017-2128	NRC017-2156		EXhibit 102 - Memorandum From Donnellon Re: Control Rod Drive Nozzle Cracking	
NRC017-2219	NRC017-2219		EXhibit 167 E-mail From Wuokko To NRC Re: Bulletin 2001-01	
NRC017-2677	NRC017-2703	<u> </u>	EXhibit 92 E-mail From Cook With Serial 2731 Version 1b	
NRC017-2713	NRC017-2720		EXhibit 200 E-mail From Cook Re: Serial 2735	
NRC020-0099	NRC020-0124		EXhibit 100 E-Mails With Drafts Of Serial 2731	
NRC023-0654	NRC023-0655		EXhibit 217 Bare Head Visual Examination Results, From Mclaughlin's	
NRC024-0561	NRC024-0561		EXhibit 122 Memorandum From Chimahusky To Outage  Management/Outage Control, CRD Video Inspection	
NRC024-1208	NRC024-1210		EXhibit 91 E-mail From Goyal With Draft Of Serial 2731	
NRC025-0500	NRC025-0501		EXhibit 129 E-mail From Fyfitch, CRDM Operability Discussions With Pillow	
NRC025-0521	NRC025-0554		EXhibit 147 E-mail From Goyal Re: Framatone Response For NRC Bulletin	
NRC025-0705	NRC025-0735		EXhibit 148 E-mail From Goyal Re: Framatome Response For NRC Bulletin	
NRC025-1016	NRC025-1019		EXhibit 21- PCAQR No. 1998-0767, Video Inspection	

Bates - Begin	Bates - End	Proprietary	Full Name	Adams Accession Number
NRC026-2874	NRC026-2878		EXhibit 32 - Licensee Notes Of Interview With David Lee Eshelman	
NRC026-2921	NRC026-2923		Exhibit 8 Licensee Notes Of Interview Of Haley	
NRC027-0001	NRC027-0074		EXhibit 52- Outage Log For March 28- April 7, 2000	
NRC027-1692	NRC027-1703		EXhibit 87 Review And Approval Report For Serials 2731, 2735, 2741, And 2744	
NRC027-2314	NRC027-2348		EXhibit 40 Root Cause Analysis, RC-2 Packing Leak Management Issues	
NRC028-0640	NRC028-0657		EXhibit 4 - BACC Procedure, Revision 1/C1	
NRC028-0658	NRC028-0678		EXhibit 119 BACC Procedure, Revision 1/C2	
NRC02 <u>8-0679</u>	NRC028-0701		EXhibit 42- Boric Acid Corrossion Control Procedure	
NRC028-1295	NRC028-1330		EXhibit 10 Memorandum From Donnellon Re: Control Rod Drive Nozzle Cracking	
NRC029-0150	NRC029-0157		Exhibit 126 Letter From FENOC, Initial Response To June 17, 2002, Subpoena	
NRC029-0588	NRC029-0599		EXhibit 11 - PRC Meeting History, Mod 94-0025	
NRC029-0640	NRC029-0685		EXhibit 2 - Potential Condition Adverse To Quality Report 94-0295 - Committment Closeout	
NRC029-0902	NRC029-0932		EXhibit 109 Letter From Entergy To NRC, ANO Response To NRC Bulletin 2001-01	
NRC029-1228	NRC029-1228		EXhibit 62 E-mail From Hovland Re: Conversation With Rust EXpert	
NRC030-0376	NRC030-0388		EXhibit 3 Modification 94-0025 - Request To Install Service Structure To Facilitate Cleaning And Inspections	
NRC030-0422 and NRC030- 0497 to	NRC030-0498		EXhibit 127 Letter From Guza, Work Repair Documents For Flange Repair In 12RFO	

Bates - Begin	Bates - End	Proprietary	Full Name	Adams Accession Number
NRC030-0782	NRC030-0849		EXhibit 6 PCAQR Reporting Procedure, Revision 1/C1	
NRC030-1411	NRC030-1413		EXhibit 9 E-mail From Jacobson To Ulie Re: Proposed Violations	<del>_</del>
NRC030-1451	NRC030-1469	<u> </u>	EXhibit 12 - PRG Meeting Minutes	
NRC030-1486	NRC030-1514		EXhibit 13 - Joint Davis-Besse Project Reivwe Group And Davis-Besse Work Scope Committee Meeting Minutes	
NRC030-1515	NRC030-1527		EXhibit 14: Davis-Besse Project Review Group Meeting Minutes	
NRC030-1540	NRC030-1555	<u></u>	EXhibit 15- WSC Meeting Minutes	
NRC030-1668	NRC030-1669		EXhibit 231 Letter From Garde	
NRC030-1709	NRC030-1709		EXhibit 68 E-mail From Pleune, Boric Acid Corrosion Equation	
NRC030-1964	NRC030-1964	<u> </u>	EXhibit 263 Report Of Interview Of Ackerman	
NRC030-1965	NRC030-1965	<u> </u>	EXhibit 245 Report Of Interview Of Hilkens	
NRC030-2090	NRC030-2093	<u> </u>	EXhibit 185 E-mail From Slocum Re: CRDM Photos	
NRC030-2095	NRC030-2095		EXhibit 174 E-mail From Goyal Re: Oconee 3 CRDM Nozzle Cracking	
NRC030-2096	NRC030-2107		EXhibit 215 Interview Of Siemaszko	
NRC031-0042	NRC031-0050		EXhibit 44- CR 2000-0782, Boric Acid Leakage From Weep Holes	
NRC031-0283	NRC031-0285		EXhibit 225 Pictures From System Engineer's Notebook With Penciled- In Corrections, Plus Daft's Pictures	
NRC031-0529	NRC031-0556		EXhibit 48 - Engineer's Notebook	
NRC032-1358	NRC032-1364		EXhibit 124 WO 99-000356-000, CRD Motor Flanges Need Inspection And Possible Repair During May Mini-Outage (Voided)	
NRC036-13229	NRC036-13237		Exhibit 224 Pictures of Nozzles from 12RFO from DAFT, dated October 17, 2001-EV	
NRC036-13241	NRC036-13242		Exhibit 1 Investigation Status Record	

Bates - Begin	Bates - End	Proprietary	Full Name	Adams Accession Number
NRC036-13243	NRC036-13249		EXhibit 20- PCAQR 1998-0649, RPV Head Boric Acid Residue,	
NRC036-13250	NRC036-13253		Exhibit 54 CR 1999-0510, Both REs Inoperable	L
NRC036-13254	NRC036-13254		Exhibit 274 Allegation Summary Table	
NRC036-13255	NRC036-13255		EXhibit 85 NRC Bulletin 2001-01, Circumferential Cracking Of Reactor Pressure Vessel Head Penetration Nozzles	ML012080284
NRC036-13271	NRC036-13296		EXhibit 86 Serial 2731	ML012550023
NRC036-13297	NRC036-13298		Exhibit 230 Subpoena Duces Teucem to Andrew Siemaszko	
NRC001-1715	NRC001-1750	Yes	Exhibit 189 Sia Calculation Package - Finite Element Gap Analysis Of CRDM Penetrations	
NRC002-0192	NRC002-0199	Yes	Exhibit 206 E-mail From Cook Re: Serial 2735 Supplemental Response	
NRC003-0900	NRC003-0902	Yes	Exhibit 221 Wuokko's Documentation Of Telephone Call Re: Mtg Re: NRC 2001-01, RVHP CRDM Nozzle Circumferential Cracking And Obtaining NRC Crack Growth Rate	
NRC003-1212	NRC003-1217	Yes	Exhibit 197 E-mail From Cook Re: Serial 2735 Additions	
NRC027-1447	NRC027-1476	Yes	Exhibit 227 Serial 2741	
NRC030-0191	NRC030-0279	Yes	Exhibit 19- B&WOG Integrated Response To Gl 97-01: "Degradation Of CRDM Nozzle"	