

Joseph J. Hagan
President and Chief Nuclear Officer

330-761-7895
Fax: 330-384-5669

September 13, 2007

BV-L-07-121
DB-Serial Number 3365
PY-CEI/NRR-3062L

Ms. Cynthia A. Carpenter
Director, Office of Enforcement
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Beaver Valley Power Station, Unit Nos. 1 and 2
Docket Nos. 50-334 and 50-412

Davis-Besse Nuclear Power Station, Unit No. 1
Docket No. 50-346

Perry Nuclear Power Plant, Unit No. 1
Docket No. 50-440

Subject: Actions Required by Confirmatory Order EA-07-199

By letter dated August 15, 2007, the Nuclear Regulatory Commission (NRC) issued a Confirmatory Order (Order) to the FirstEnergy Nuclear Operating Company (FENOC) to formalize commitments made by FENOC following the NRC issuance of a Demand for Information (DFI) on May 14, 2007. In addition to the commitments made by FENOC in response to the DFI in letters dated June 13, 2007, and July 16, 2007, the Order contains requirements to provide letters to the Director, NRC Office of Enforcement, prior to implementation of some of the commitments and following completion of all of the commitments.

Attachment 1 to this letter provides the text of the Operating Experience document that was provided to the nuclear industry as required by item 5 of the Order.

Attachment 2 identifies that there are no commitments contained in this response. If there are questions, or additional information is required, please contact Mr. Gregory H. Halnon, Director - Fleet Regulatory Affairs, at 330-384-5638.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 13, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Halnon', with a long horizontal flourish extending to the right.

Attachments:

1. Operating Experience Document
2. Commitment List

cc: Document Control Desk
Assistant General Counsel for Materials Litigation and Enforcement
Regional Administrator, NRC Region I
Regional Administrator, NRC Region III
NRC Project Manager – Davis-Besse and Perry
NRC Resident Inspector – Davis-Besse
NRC Project Manager – Beaver Valley
NRC Resident Inspector – Beaver Valley
NRC Resident Inspector – Perry Nuclear
Utility Radiological Safety Board
Mr. D. A. Allard, Director BRP/DEP
Mr. L. E. Ryan, BRP/DEP
Ms. N. Dragani, Ohio Emergency Management Agency

Operating Experience Document

The following Operating Experience was shared with the rest of the nuclear industry on August 10, 2007:

SUBJECT: Inadequate Regulatory Sensitivity during the Review of Commercial Reports

ABSTRACT:

The FirstEnergy Nuclear Operating Company (FENOC) organization did not perform a comprehensive review of reports used for insurance claim arbitration associated with the Davis-Besse Reactor Pressure Vessel (RPV) head degradation event. This resulted in ineffective communication with the Nuclear Regulatory Commission (NRC) regarding potential safety implications. It also resulted in a Demand for Information (DFI) from the NRC.

These reports were initiated and handled within the non-nuclear portion of the company and FENOC's perception was that the reports were solely for insurance arbitration purposes.

Major contributors to this event included the programs, procedures, and management methods that were employed in the review and handling of commercial (third party) reports used as expert testimony. Since these were commercially prepared reports handled by the non-nuclear portion of the company, FENOC personnel did not perform a comprehensive review and did not appropriately communicate the contents of the reports to the NRC.

REASON FOR MESSAGE: To provide other licensees an example where commercial reports initiated by the non-nuclear portion of the company can have regulatory significance.

EVENT DATE: May 14, 2007
UNIT NAME: FirstEnergy
NSSS/A-E: N/A
TURBINE MANUFACTURER: N/A
MAINTENANCE RULE APPLICABILITY: N/A
COMPONENT INFORMATION (AS APPLICABLE): N/A
MANUFACTURER: N/A
MODEL NUMBER: N/A
PART NUMBER: N/A

DESCRIPTION:

FENOC submitted an insurance claim relative to the Davis-Besse RPV head degradation event. The claim was subsequently taken to arbitration. FENOC elicited outside expertise (third party) to prepare expert testimony reports in support of the insurance claim. These reports were viewed solely as documents used for arbitrating an insurance claim. Each of the reports was intended to address a specific portion of the insurance policy for the arbitration and supported the conclusion that the damage to the reactor head met the terms of the policy. The reports were not intended to be root cause reports, supplement the existing root cause reports, or be used in any way to operate or maintain the plant.

Early in December 2006, FirstEnergy (FirstEnergy is the parent company of FENOC) Legal Department received a draft of two expert testimony reports. On December 5, 2006, sections of one of the reports were routed to a limited number of individuals within FENOC for review. This included several members of FENOC senior management and other reviewers who had knowledge of the Davis-Besse RPV head degradation event. Although FENOC has nuclear processes in place to review external documents, those processes were deemed not to be applicable to this report since it was prepared to resolve insurance coverage issues and were not used.

No specific review criteria or acceptance process was provided to the FENOC reviewers, and the scope and level of the reviews varied. Several reviewers had comments, some were written and some were provided orally. Neither the comments nor their resolution were formally tracked. Because of the nature of the report, the individuals involved in the review had developed a mindset that the report was expert testimony being used in a

commercial/legal process. In addition, because of the mindset that the commercially prepared report was expert testimony being used in a legal process, the report was viewed as a confidential, attorney-client privileged communication. As a result of this mindset, the short turn-around time requested for the review, and a lack of specific direction, a comprehensive technical review of the entire report by FENOC personnel was not conducted when the report was received.

During this review of the draft report, FENOC executive management raised a question as to whether the report could have possible safety implications. After conferring with the authors of the report, it was determined that the analysis in the report did not represent a safety concern, that the industry inspection guidance was adequate, that the information in the report did not call into question the effectiveness of corrective actions implemented in response to the Davis-Besse RPV head degradation event, and that the report did not otherwise contain information that had significant implication for public health and safety. This decision was based, in part, on words in the draft report that was circulated within FENOC for review. The draft report explained that if the current NRC-ordered inspections had been in place at 12RFO in 2000, the cracks in Control Rod Drive Mechanism (CRDM) nozzles would have been identified and repaired and the head wastage would not have happened. This explanation was not included in the formal report because it was part of a larger section that was condensed prior to issuing the final report. Since there were no safety implications associated with the report, and the mindset was that the report was a commercial report written for insurance purposes, the FENOC reviewers believed that there was no need to inform the NRC of the report.

Since FENOC did not identify the information as having regulatory significance the NRC was not made aware of the report at that time. FENOC missed an opportunity to proactively communicate the assessment of the report's conclusions, safety significance, and reportability requirements.

On December 18, 2006, the report was submitted to the insurer in support of the FENOC insurance claim. On February 23, 2007, the insurer sent a letter to FENOC expressing its concern that the report raised a potential safety [concern]. At this point, the potential

safety concern was also entered into the FENOC Corrective Action Program and the potential safety concern was promptly communicated with the NRC.

On March 20, 2007, the commercial report was sent to the NRC. On April 2, 2007, the NRC sent a letter to FENOC requesting additional information about the report. On May 2, 2007, FENOC responded, but did not provide the level of detailed (sic) expected by the NRC. This resulted from organizational "group think," reflected in a narrowly focused technical review by the nuclear organization. This was caused by shortfalls in defined interfaces, expectations, and communications between the nuclear and non-nuclear organizations. The FENOC review was pre-conditioned that the report was solely third party expert testimony in a commercial matter. FENOC evaluated the technical feasibility of the proposed timeline for the Control Rod Drive Mechanism nozzle crack growth rate and RPV head wastage and did not consider the broader organizational implications of the report. With this narrow focus FENOC did not recognize that the May 2, 2007 response could be interpreted as being a revision to the root cause evaluation for the DB RPV head degradation event. This narrow focus and the continued inadequate communication with the NRC, led to the issuance of the DFI on May 14, 2007.

CAUSES:

Apparent Cause - Less than adequate sensitivity to potential regulatory concerns during the review and handling of the report.

Contributing Cause - Lack of coordination between the insurance arbitration process and nuclear processes.

CORRECTIVE ACTIONS:

1. Conduct a root cause evaluation to determine why FirstEnergy and FENOC were not sensitive to the regulatory implications of the commercially prepared (third party) reports, as demonstrated by the limited FENOC involvement in the report development and review, and the failure to perform a technical review of the reports in response to the Request for Information. This led to a perception that FENOC was no longer accepting responsibility for the Davis-Besse RPV head degradation event.
2. Conduct regulatory sensitivity training for selected FirstEnergy employees.

3. Conduct effectiveness reviews to determine if an appropriate level of regulatory sensitivity is evident. The first effectiveness review will be conducted in January 2008 by an external consultant. Internal effectiveness reviews will be conducted as part of the FENOC Integrated Performance Assessment process. A follow-up external effectiveness review will be conducted in January 2009.
4. Develop and issue an industry benchmarking survey, which seeks relevant benchmarking information on Communications Policies, Correspondence Procedures, Processes to Review/Accept Commercial Reports, and Regulatory Sensitivity and Awareness Training.
5. Develop a formal process to review technical reports prepared as a part of a commercial matter. The process will provide criteria for FENOC to utilize to determine if the report has the potential for regulatory implications or impact on nuclear safety both at our sites and within the nuclear industry. This process will provide for the timely and critical evaluation of this type of report and will complement our existing formal nuclear process for obtaining technical reports from our agents and contractors. This will help to ensure that Interfaces with corporate organizations responsible for functions that affect the nuclear station are clearly established and understood.
6. Revise the NRC Correspondence procedure to ensure specific questions are asked during the process relative to the experience gained from responding to the DFI.
7. Revise the policy on Regulatory Communications.

SAFETY SIGNIFICANCE:

There was no safety significance associated with the inadequate handling of the commercially prepared report in December 2006. However, due to inadequate communication; the report was not promptly provided to the NRC for them to independently determine that current RPV head inspection requirements would ensure the structural integrity of RPV heads, given the conclusions of the report. The NRC documented that the current inspection requirements were adequate in a memorandum dated May 4, 2007.

Commitment List

The following table identifies those actions committed to by FirstEnergy Nuclear Operating Company (FENOC). Any other statements in this letter are provided for information purposes and are not considered regulatory commitments. Please notify Mr. Gregory H. Halnon, Director - Fleet Regulatory Affairs, at 330-384-5638, of any questions regarding this document or associated regulatory commitments.

Commitment	Due Date
None	N/A