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RAS-C 139

SDP/EA REQUEST & STRATEGY FORM

Case Data

Disputed: [ ] Related Cases: 03-025, 05-066-073,

SDP/EA No.: 06-191 Number: 1 Docket No.: N/A

Request Date: 8-3-06 Region: III Case Type: IAR Small Entity: [x] No [ ] Yes

Licensee: Individuals Facility / City: Davis-Besse

License No.: N/A Last Day of Insp.: 7-28-06

Insp. Rpt No.: OI-3-2002-006 Keywords: ES: drs

Facts (EATS): An enforcement panel was convened on August 3, 2006, to consider whether enforcement action should be taken against additional individuals regarding incomplete and inaccurate information provided to the NRC by FirstEnergy Nuclear Operating Company (FENOC), the licensee for Davis-Besse, in response to Bulletin 2001-001. See remarks section below for background information and panel conclusions.

Discussion (if required):

SDP

[x] No [ ] Yes

Assessment: [ ] Green [ ] White [ ] Yellow [ ] Red NOV [ ] Yes [x] No

Wrongdoing

[x] No [ ] Yes OI Rpt. No.: 3-2002-006

DOJ Referral? [ ] No [x] Yes Ref. Date 1-17-03 Action Date 1-19-06 [ ] Decline [x] Accept

[ ] Awaiting DOJ [ ] Needs coordination with DOJ

Resolution: Does not meet the NRC [ ] Legal [x] Policy threshold for taking enforcement action regarding

[x] Deliberate Misconduct [ ] Careless Disregard [ ] Non-willful violation(s)

Escalated Action

Date of Violation: N/A

Consequence: [ ] Actual [ ] Potential [ ] Reg. Impact [ ] Willfulness

Prior Esc. Action? [ ] No [ ] Yes EA: _____ Date: _____

ID Credit? [ ] No [ ] Yes [ ] TBD SL: [redacted]

CA Credit? [ ] No [ ] Yes [ ] TBD Supp: [redacted]

CP? [ ] No CP [ ] Base [ ] Double Base [ ] Other: _____

Discretion or Order?

[X] No [ ] Yes Explain:

Future Action

Conference? [ ] No [ ] Yes [ ] Open [ ] Closed Additional Info: _____

Action? [ ] No Violation [ ] Re-panel [ ] PEC Letter [ ] Choice Letter [ ] Choice Call [ ] SL IV [ ] Re-caucus

[ ] Region Issue Esc. [ ] Full Package Review by HQ [ ] DEDR Review [ ] Commission [ ] NCV [ ] Offer ADR

Other Action? _____

Participants: Region Ken O'Brien, Bruce Berson

OE Mike Johnson, Dave Solorio, Doug Starkey OGC/OI Sara Brock, Mike Spencer / Rich Paul, Scott Langan

Program Office _____ Other _____

Remarks/Comments/Lessons Learned:

Approved, Dir. OE: /RA/

Date: 08/07/06

U.S. NRC
In re DAVID GEISEN Exhibit # 28
Docket # 1A-05-052

Date Marked for ID: 12/12, 2008 (Tr. p. 2211)

Date Offered in Ev.: 12/12, 2008 (Tr. p. 2241)

Through Witness/Panel: O'Brien

Action: ADMITTED REJECTED WITHDRAWN

Date: 12/12, 2008 (Tr. p. 2302)

DOCKETED
USNRC

September 9, 2009 (11:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

TEMPLATE = SECY-028

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Background: On December 20, 2005, OE issued Enforcement Notification (EN) 05-054 to the Commission. The EN notified the Commission of the staff's intention to issue Immediately Effective Orders to four individuals, all former employees at Davis-Besse, for their participation in providing incomplete and inaccurate information in the licensee response(s) to NRC Bulletin 2001-001. The four Orders, which were subsequently issued on January 4, 2006, were based on information obtained during an OI investigation which determined that 11 Davis-Besse employees provided incomplete and inaccurate information to the NRC. (The staff previously issued an Order to a fifth individual on April 21, 2005). EN-05-054 informed the Commission that the staff did not intend to take enforcement action against the other six individuals unless additional evidence became available to the NRC as a result of the Department of Justice (DOJ) criminal proceeding on these matters.

Subsequent to the issuance of the above Orders, the staff obtained the following new information:

1. On January 19, 2006, DOJ issued an indictment to one of the other six individuals, a former contractor at Davis-Besse who was responsible for compiling and drafting the responses to Bulletin 2001-001. A previous enforcement panel had determined that there was insufficient evidence to conclude that this individual had prior knowledge and acted on that knowledge to provide incomplete and inaccurate information to the NRC in the licensee's response to the Bulletin.

2. In early July 2006, FENOC informed the NRC of additional documents that had been discovered at Davis-Besse which appeared to be relevant to the above OI investigation but which had not previously been given to the NRC . One of those documents, a draft response to Bulletin 2001-001 containing hand written notes by the Davis-Besse Regulatory Affairs Compliance Licensing Supervisor, caused the staff to reevaluate the involvement of that individual in the preparation of the licensee's September 4, 2001, response to Bulletin 2001-001. A previous enforcement panel had determined that there was insufficient evidence to conclude that this individual had prior knowledge and acted on that knowledge to provide incomplete and inaccurate information to the NRC in the licensee's response to the Bulletin. As a result of these additional documents, on July 28, 2006, OI interviewed the Regulatory Compliance Licensing Supervisor in order to resolve the staff's concerns regarding the additional documents.

8-3-06 - Enforcement Panel: An enforcement panel was convened on this date to determine, based on the new information above, whether enforcement actions should be issued to the former contractor or the Licensing Superviosr.

Note: In evaluating this new evidence, the panel used the same evaluation criteria which it had used in reviewing the available evidence for each of the other individuals identified during the OI Davis -Besse investigation as providing incomplete and inaccurate information to the NRC, i.e, did the individual have prior knowledge of the condition of the Davis-Besse reactor vessel had and, if so, did the individual provide incomplete or inaccurate information to the NRC in response to the Bulletin.

The panel made the following determinations and recommendations:

Regarding the former contractor: The panel reviewed the DOJ indictment issued to the former contractor, the evidence contained in the OI report, the additional documents the licensee provided to the NRC in early July, and the July 28, 2006 OI interview of transcript of the Licensing Supervisor which made reference to the contractor. The panel concluded that there was insufficient evidence to conclude that the former contractor had personal knowledge of the condition of the reactor vessel head or that he deliberately provided incomplete or inaccurate information to the NRC in the Bulletin responses. The panel noted that, in accordance with the Enforcement Policy, the NRC would not normally take an enforcement action against an individual, such as this contractor, who is in a low level position within the licensee's organization. The panel reaffirmed its previous position to recommend that the NRC not take enforcement action against the former contractor.

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Regarding the Licensing Supervisor: The panel reviewed the additional documents the licensee provided to the NRC in early July and the OI July 28, 2006, transcript of interview of the Licensing Supervisor and concluded that he provided credible responses to address the staff's concerns regarding his written comments on the newly discovered documents. The panel concluded that there was insufficient evidence to conclude that the Licensing Supervisor had prior knowledge of the condition of the reactor vessel head or that he deliberately provided incomplete or inaccurate information to the NRC. The panel reaffirmed its previous position to recommend that the NRC not take enforcement action against the Licensing Supervisor.

W/C