

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-346

LICENSE NO. NPF-3

FIRSTENERGY NUCLEAR OPERATING COMPANY

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation of the U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated April 5, 2010, filed by David Lochbaum, hereafter referred to as the "Petitioner." The Petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS).

The Petition requested that the NRC issue a Show Cause Order, or comparable enforcement action, preventing the DBNPS from restarting following the shutdown in February 2010, until adequate protection standards were met.

As the basis for the April 5, 2010, request, the Petitioner states that FirstEnergy Nuclear Operating Company (the licensee for DBNPS) has violated Federal regulations and the explicit conditions of its operating license by operating for longer than 6 hours with pressure boundary leakage. The Petitioner considers such operation to be potentially unsafe and to be in violation of Federal regulations. To support the Petitioner's belief that the facility is prohibited from operating longer than 6 hours with pressure boundary leakage, the Petition references the facility operating license; the technical specifications for DBNPS; Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants"; and the Standard Technical Specifications.

The Petition of April 5, 2010, states that the licensee for DBNPS has repeatedly violated Federal regulations and the explicit conditions of its operating license by operating the reactor

longer than 6 hours with pressure boundary leakage. In doing so, the Petitioner states that the public was exposed to elevated and undue risk. The NRC's regulations and the operating license the NRC issued for DBNPS define adequate protection standards, which include zero reactor coolant pressure boundary leakage during operation, with the requirement to shut down the reactor within 6 hours if such leakage exists. The Petitioner states that with regard to the DBNPS, evidence demonstrates that the adequate protection standard was not met on multiple occasions and that it is imperative for the NRC to act now to protect the public.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the licensee on November 10, 2010. The Petitioner responded with comments on November 23, 2010, and the licensee did not provide comments. The final Director's Decision includes a summary of the comments and the NRC staff's response to them.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to issue a Show Cause Order or comparable enforcement-related action to the licensee for DBNPS is denied. The Director's Decision [DD-11-02] pursuant to 10 CFR 2.206, "Requests for Action under This Subpart," explains the reasons for this decision. The complete text of the Director's Decision is available for inspection in the Agencywide Documents Access and Management System at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room), ADAMS Accession No. ML110250189).

In summary, the NRC has completed a rigorous Special Inspection and determined that enforcement is not required for this matter and that the NRC has reasonable assurance that adequate protection standards have been met and will continue to be met at DBNPS. NRC

Region III Inspection Report 05000346/2010-008, dated October 22, 2010, focused on these concerns. The NRC Special Inspection Team was chartered to assess the circumstances surrounding the identification of the flaws in the reactor pressure vessel head control rod drive mechanism (CRDM) nozzle penetrations at DBNPS. The NRC has reviewed in detail the CRDM nozzle cracking, as well as the circumstances surrounding the causes of this cracking and previous opportunities for identification and intervention. The NRC's inspection determined that the public health and safety have not been, nor are likely to be, adversely affected. The inspection determined that the licensee conformed to the subject NRC regulatory requirements pertinent in this circumstance and applicable to assessing the cause and effect of the CRDM nozzle cracking conditions.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 15 day of February 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation