



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 28, 2013

Mr. Ray Lieb
Site Vice President
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
Mail Stop A-DB-3080
5501 North State Route 2
Oak Harbor, OH 43449-9760

SUBJECT: DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1 - SUPPLEMENTAL
INFORMATION NEEDED FOR ACCEPTANCE OF REQUESTED LICENSING
ACTION RE: REQUEST FOR EXEMPTION FROM POST-REPAIR TESTING
REQUIREMENTS OF CONTAINMENT VESSEL OPENING (TAC NO. MF0537)

Dear Mr. Lieb :

By letter to the U.S. Nuclear Regulatory Commission (NRC) dated January 18, 2013, FirstEnergy Nuclear Operating Company (FENOC, the licensee), submitted an exemption request for the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS). The proposed exemption request would allow the use of an alternate method of containment testing following activities associated with steam generator replacement.

The purpose of this letter is to provide you the results of the NRC staff's acceptance review of this exemption request. The acceptance review was performed to determine if there is sufficient technical information in scope and depth to allow the NRC staff to complete its detailed technical review. The acceptance review is also intended to identify whether the application has any readily apparent information insufficiencies in its characterization of the regulatory requirements or the licensing basis of the plant.

The NRC staff has reviewed your application and concluded that the information delineated in the enclosure to this letter is necessary to enable the staff to make an independent assessment regarding the acceptability of the proposed request in terms of regulatory requirements, and the protection of public health and safety and the environment.

In order to make the application complete, the NRC staff requests that FENOC supplement the application to address the information requested in the enclosure by March 13, 2013. This will enable the NRC staff to begin its detailed technical review. If the information responsive to the staff's request is not received by the above date, the application will not be accepted for review pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.101, and the NRC will cease its review activities associated with the application. If the application is subsequently accepted for review, you will be advised of any further information needed to support the staff's detailed technical review by separate correspondence.

The information requested and associated time frame in this letter were discussed with Phil Lashley of your staff on February 22, 2013.

R. Lieb

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If you have any questions, please contact the DBNPS Project Manager, Mike Mahoney, at (301)-415-3867.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Mahoney", with a long horizontal flourish extending to the right.

Michael Mahoney, Project Manager
Plant Licensing Branch III-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosure:
As stated

cc w/encl: Distribution via Listserv

SUPPLEMENTAL INFORMATION NEEDED
EXEMPTION REQUEST FROM POST-REPAIR TESTING
FIRSTENERGY NUCLEAR OPERATING COMPANY
DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1
DOCKET NO. 50-346

By letter to the U.S. Nuclear Regulatory Commission (NRC) dated January, 18, 2013 (Agencywide Document and Management System (ADAMS) Accession No. ML13018A349) FirstEnergy Nuclear Operating Company (FENOC, the licensee), submitted a request for an exemption from certain requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.55a "Codes and Standards," specifically, Paragraph (b)(2)(ix)(J), for the Davis-Besse Nuclear Power Station, Unit No. 1.

The NRC has completed its acceptance review (in accordance with Nuclear Reactor Regulation (NRR) Office Instruction, LIC-109, "Acceptance Review Procedures") of the proposed request seeking exemption from post-repair testing requirements of containment vessel opening. The request seeks an exemption from code requirements (American Society of Mechanical Engineers (ASME) Section XI, Subsection IWE – 2007 Edition with 2008 addenda incorporated by reference in 10 CFR 50.55a), as conditioned in 10 CFR 50.55a(b)(2)(ix)(J), and to allow use of a proposed alternative method for repair/replacement of the Class MC containment. The request was made pursuant to 10 CFR 50.12, "Specific Exemptions" citing that special circumstances, as defined in 50.12(a)(2) are present.

The NRC staff finds that the regulatory basis for the request (exemption pursuant to 10 CFR 50.12 crediting special circumstances described in Section 50.12(a)(2)(ii)) is not appropriate. The intent of 10 CFR 50.12 is to grant specific exemptions from a regulation, where justified based on special circumstances, and generally does not involve a proposed alternative. One does not request an exemption from the requirements of 10 CFR 50.55a pursuant to 10 CFR 50.12, because there are explicit regulatory provisions within 10 CFR 50.55a(a)(3) and 50.55a(g)(5) that would allow requesting and authorizing relief or proposed alternatives from requirements of code that is incorporated by reference with conditions and mandated therein for the containment inservice inspection (ISI) interval.

Further, the licensee's use of 10 CFR 50.12(2)(ii) which states: "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;" is inappropriate as the regulatory basis for the request because the condition in 10 CFR 50.55a(b)(2)(ix)(J) was imposed since IWE-5000 of the 2007 edition and 2008 addenda leaves the option of not verifying the structural integrity of containment with a pressure test following a major modification (see Statements of Consideration for the 2008 50.55a rule – *Federal Register* 76 FR 36232-36279, dated June 21, 2011), and it does serve the purpose to provide post-repair verification of structural and leak-tight integrity of the restored containment.

The regulatory basis of 10 CFR 50.12, used by Davis Besse in the submittal, is not consistent with the precedents cited in the request (Waterford, Watts Bar) and several other similar request for relief (e.g. Sequoyah Unit 1, Unit 2). The correct regulatory basis is a request for authorization of proposed alternative, from the requirements of 10 CFR 50.55a(g)(4)(ii), with

regard to containment ISI (including repair/replacement), pursuant to 10 CFR 50.55a(a)(3)(i), on the basis that the proposed alternative provides an acceptable level of quality and safety.

Based on the criteria in Sections 3.1.2 and 3.2 of Appendix B of LIC-109, the NRC staff finds that the regulatory basis for the submittal is not appropriate and, therefore, the submittal is deemed as "Unacceptable with Opportunity to Supplement." The licensee can supplement its request by submitting the request as an alternative, pursuant to 10 CFR 50.55a(a)(3)(i), from the requirements in 10 CFR 50.55a(g)(4)(ii) with regard to the post-repair pressure testing requirements of IWE-5000 (2008 addenda) as conditioned by 50.55a(b)(2)(ix)(J). The appropriate regulatory basis would be a proposed alternative on the basis that the request provides an acceptable level of quality and safety. The proposed alternative should be clear and specific to the regulatory condition on code provisions in IWE-5000 from which relief would be requested and should be separate from the description of the proposed repair in the submittal.

R. Lieb

- 2 -

If you have any questions, please contact the DBNPS Project Manager, Mike Mahoney, at (301)-415-3867.

Sincerely,

/ RA /

Michael Mahoney, Project Manager
Plant Licensing Branch III-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-346

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As stated

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