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September 3, 2021
L-21-223

Mark Lombard
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject:
Davis-Besse Nuclear Power Station, Unit No. 1
Docket No. 50-346, License No. NPF-3
Request for Relaxation of Confirmatory Action Commitment (EA-04-224)

The purpose of this letter is to request relaxation of a condition that appears in the Confirmatory Order (CO) (ADAMS Accession No. ML051960354) issued to Energy Harbor Nuclear Corp.'s (EH's) predecessor, FirstEnergy Nuclear Operating Company (FENOC), on July 15, 2005, in connection with EA-04-224. The CO provides that by August 31, 2005, "FENOC will include surveys of contractor personnel as part of the quarterly FENOC performance monitoring of SCWE [safety conscious work environment] at its nuclear facilities." The CO also indicates that FENOC "surveys are performed annually."

Consistent with the CO, EH will continue to include contractor personnel in the scope of the SCWE surveys it performs; however, going forward EH seeks to adjust the frequency of the performance of SCWE surveys consistent with industry practice and site conditions. As explained below, and for good cause shown, EH therefore requests approval to alter the frequency of performing SCWE surveys, insofar as the Nuclear Regulatory Commission (NRC) views the performance of annual surveys as a commitment made by FENOC in the referenced CO. EH respectfully requests that this request be reviewed on an expedited basis and that a response be provided by November 1, 2021, before EH's next scheduled survey.

Background Regarding EH's Annual SCWE Surveys

On July 15, 2005, the NRC issued the CO identified above (ADAMS Accession No. ML051960354). The CO confirmed commitments made to the NRC by FENOC as part

of a settlement agreement between FENOC and the NRC concerning an apparent violation involving a former contractor manager, a catering supervisor, and a catering/delivery employee who were threatened by contractor management with termination of employment for attempting to raise a fitness-for-duty concern at the Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse).

The actions FENOC agreed to take focused on SCWE training for contractor personnel who are granted unescorted access to FENOC nuclear facilities. FENOC also agreed to "include surveys of contractor personnel" as part of FENOC's monitoring of SCWE. The CO indicated that "surveys are performed annually"; however, FENOC did not commit to conduct "annual" surveys in connection with this CO. As explained below, FENOC committed to perform annual surveys in a separate and unrelated proceeding. That prior commitment was of limited duration and has been fulfilled.

At the time the NRC issued the CO referenced in this request, FENOC already was performing annual SCWE surveys pursuant to an earlier CO. The NRC issued the earlier CO (ADAMS Accession No. ML033360599) on March 8, 2004, in a separate and unrelated proceeding, EA-03-214, which involved the Davis-Besse reactor restart following the Manual Chapter 0350 restart inspection. As documented in the March 8, 2004 CO, FENOC agreed to perform annual Safety Culture assessments for five years, which included SCWE surveys as one method of assessment. Thus, the reference to annual SCWE surveys in the July 15, 2005 CO referred to FENOC's earlier commitment from the March 8, 2004 CO.

FENOC fulfilled the March 8, 2004 CO commitments; and, by letter dated May 12, 2009 (ADAMS Accession No. ML091680122), notified the NRC that it had completed the agreed-upon five years of Safety Culture annual assessments. The NRC agreed and, on September 10, 2009 (ADAMS Accession No. ML092450747), closed out the March 8, 2004 CO. Afterward, FENOC, then EH, continued performing SCWE surveys annually. EH now plans on continuing to perform SCWE surveys, and to include contractor personnel, but to adjust the periodicity consistent with industry practice and site conditions. EH also plans on continuing to provide SCWE training to contractor personnel, which, as noted, was the focus of the July 15, 2005 CO.

Ongoing EH Activities Regarding SCWE

EH's Employee Concerns Program (ECP) and Nuclear Safety Culture Monitoring Panel (NSCMP) routinely observe and monitor the SCWE using methods other than annual surveys. The activities performed by the ECP and NSCMP are described in EH's SCWE-related policies and procedures, including NOPL-AD-1000, *Management Model*, and NOBP-LP-2502, *Safety Culture Monitoring*. These documents incorporated guidance contained in Regulatory Issue Summary (RIS) 2005-18, *Guidance for Establishing and Maintaining a Safety Conscious Work Environment*, and are described in greater detail below.

NOPL-AD-1000, Management Model

One of EH's key SCWE-related policies is NOPL-AD-1000, *Management Model*, which helps ensure that a healthy Safety Culture and SCWE are maintained at EH's nuclear facilities. This policy identifies the EH personnel who are responsible for maintaining a healthy Safety Culture and SCWE and the duties they are expected to perform. Key personnel and the duties they are expected to perform to help maintain a healthy Safety Culture and SCWE include:

- Executive Leadership Team members, who are responsible for establishing and maintaining nuclear safety policies and assessment tools for measuring and monitoring Safety Culture;
- Site Leadership Teams, who are responsible for assessing and monitoring safety culture in all activities, with an emphasis on day-to-day plant operations; and
- ECP Representatives, who are responsible for monitoring site activities and apprising senior management of events, circumstances, or trends related to the SCWE.

As part of their duties, ECP representatives also routinely interface with personnel, including contractor personnel, through daily one-on-one and group interactions. In addition, ECP collection boxes are located at multiple locations at each EH nuclear facility, allowing personnel to submit concerns and receive feedback after their concerns are evaluated. Information learned by ECP representatives regarding the SCWE is, in turn, shared with the site leadership to keep them informed.

NOBP-LP-2502, Safety Culture Monitoring

Another key document that helps ensure a healthy Safety Culture and SCWE are maintained at EH's nuclear facilities is NOBP-LP-2502, *Safety Culture Monitoring*. This procedure requires, among other things, the NSCMP to meet a minimum of two times per year. The express purpose of these meetings is to consider the environment for raising concerns and whether a SCWE is being maintained where personnel, including contractor personnel, feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination.

The NSCMP evaluates several inputs related to Safety Culture and SCWE, including, but not limited to: leadership insights; condition reports; employee and contractor personnel feedback; SCWE and Safety Culture assessments and surveys; ECP trends; and NRC allegations. NSCMP meetings also cover the implementation of EH's SCWE policy, including EH's alternative processes for raising concerns, such as the ECP.

Ongoing NRC Activities Regarding SCWE

Beyond EH's own internal SCWE-related activities, NRC monitors EH's SCWE through routine inspection processes, including Inspection Procedure (IP) 71152, *Problem Identification and Resolution* (PI&R). One of the objectives of this IP is to "confirm licensees have established a safety conscious work environment." Where the NRC identifies a potential SCWE-related issue, inspectors consult with regional management to determine if additional inspection resources should be applied using IP 93100, *Safety-Conscious Work Environment Issue of Concern Followup*. SCWE-related findings by the NRC would in turn be evaluated by, among others at EH, the NSCMP. Nevertheless, a review of the NRC's last three biennial PI&R inspections at each of EH's three nuclear facilities shows the NRC identified no challenges to, or issues of concern regarding, EH's SCWE.

Recent SCWE Survey Results and Other Findings

As shown above, EH uses multiple complementary methods to monitor SCWE. Performing SCWE surveys is just one method; and it is unnecessary to conduct SCWE surveys on an annual basis. Indeed, a review of EH's SCWE survey results for the last five years reveals no significant SCWE-related issues, including among contractor personnel, at any of EH's nuclear facilities. Accordingly, there is no reason for EH to continue augmented SCWE monitoring by performing SCWE surveys annually at its nuclear facilities, at least not on a routine basis.

EH plans to continue SCWE surveys but to adjust that frequency consistent with industry practice and SCWE conditions at each site. EH's other methods of monitoring SCWE are capable of identifying the circumstances that would warrant adjustment. Until then, EH intends to cease conducting SCWE surveys annually, consistent with industry practice. As stated in Appendix L of Nuclear Energy Institute (NEI) 97-05, *Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools in a Safety Conscious Work Environment*, Revision 2 (December 2003), for example, "sites conduct surveys every year or every other year." [emphasis added]

Regardless of the periodicity of EH's SCWE surveys, EH will continue providing SCWE training for contractor personnel granted unescorted access. As noted, this was the focus of the agreed upon actions that appear in the July 15, 2005 CO, the subject of this request. The performance of SCWE surveys to include contractor personnel was an additional action that EH's predecessor agreed to take. Performing surveys on an annual basis, however, is a vestige of a separate, unrelated proceeding that has since been closed out.

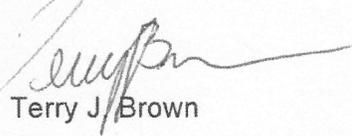
Accordingly, EH requests approval to cease performing annual SCWE surveys, insofar as the NRC views the performance of annual SCWE surveys as a requirement of the referenced July 15, 2005 CO. The information contained in this letter demonstrates that requisite good cause exists to relax this condition. EH respectfully requests that this

Davis-Besse Nuclear Power Station, Unit No. 1
L-21-223
Page 5

request be reviewed on an expedited basis and that a response be provided by November 1, 2021, before EH's next scheduled surveys. Expedited review will help EH avoid the unnecessary expenditure of valuable time and resources.

There are no regulatory commitments contained in this submittal. If there are any questions or if additional information is required, please contact Mr. Phil H. Lashley, Manager - Fleet Licensing, at (330) 696-7208.

Sincerely,



Terry J. Brown

cc: NRC Region III Administrator
NRC Resident Inspector
NRC Project Manager
Utility Radiological Safety Board