



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

December 30, 2022

EA-2022-137

Terry Brown
Site Vice President
Energy Harbor Nuclear Corp.
Davis-Besse Nuclear Power Station
5501 N. State Rte. 2, Mail Stop A-DB-3080
Oak Harbor, OH 43449-9760

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION (NOED) FOR DAVIS-BESSE
NUCLEAR POWER STATION (EPID: I-2022-004-0043) – TECHNICAL
SPECIFICATION 3.7.9, ULTIMATE HEAT SINK WATER LEVEL LIMIT

Dear Terry Brown:

By your letter dated December 28, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML22362A109), you requested that the U.S. Nuclear Regulatory Commission (NRC) exercise discretion to not enforce compliance with Action A.1 required in Davis-Besse Nuclear Power Station, Unit 1, Technical Specification (TS) Limiting Condition for Operation (LCO) 3.7.9, "Ultimate Heat Sink – Operating."

Your letter documented information previously discussed with the NRC in a telephone conference on December 23, 2022, at 2:56 p.m. (All times discussed in this letter refer to Eastern Standard Time). The principal NRC staff members who participated in the telephone conference are listed in the Enclosure. The staff determined that the information in your letter requesting the Notice of Enforcement Discretion (NOED) was consistent with your verbal request.

On December 22, 2022, at approximately 12:45 p.m., you notified the senior resident inspector of the potential request for a NOED. On December 23, 2022, at 2:56 p.m., you verbally requested that a NOED be issued pursuant to the NRC's policy regarding the exercise of enforcement discretion for an operating power reactor, set out in the NRC Enforcement Manual, Appendix F, "Notices of Enforcement Discretion," dated October 1, 2019. Specifically, you requested that the NOED be effective up to 42 hours past the TS 3.7.9, LCO Action A.1 expiration, (i.e., until 2:12 p.m. on Sunday, December 25, 2022). You asked for enforcement discretion to provide sufficient time for the ultimate heat sink (UHS) water level to recover and stabilize following a sustained high-wind condition that moved water away from the plant's intake. This letter documents the event and our telephone conversation on December 23, 2022, at 2:56 p.m., during which NRC staff granted this NOED request at 4:40 p.m. on December 23, 2022. We understand that the conditions causing the need for this NOED no longer exist, causing you to exit from this NOED on December 24, 2022, at 11:58 a.m.

During the teleconference on December 23, 2022, you stated that sustained strong eastward winds resulted in less than the TS-required UHS water level. You indicated that since December 22, 2022, operators had closely monitored UHS levels throughout a period of high-wind conditions from a direction that historically tends to lower the water level in the western Lake Erie basin with a corresponding rise in the eastern portions of Lake Erie. You also stated that there were no controllable measures that your staff could take to arrest the reducing level before the UHS fell below the technical specifications required level of 562 feet. At the time, you asserted that weather forecasts and meteorological modeling indicated that the conditions that caused the UHS level to go below the required level would be in place for the next 24–48 hours. You stated that environmental conditions causing the low lake levels were self-correcting, and your staff expected the conditions to be short-lived. You also contended that the lake surges experienced during these high-wind conditions could not reduce the intake canal below 560 feet, which is above the service water pump requirements of 554 feet to maintain a net positive suction head for the pumps. You indicated the submergence requirements for the service water pumps bounded the requirements for the diesel-driven fire pump and cooling tower makeup pumps which also draw a suction from the UHS. You stated that if the UHS level drops below 558 feet during the enforcement discretion period, your operators would perform a plant shutdown per TS 3.7.9 Condition A.1 Required Actions.

You also stated during the teleconference on December 23, 2022, and as further elaborated in your December 28, 2022, letter, that this requested enforcement discretion would avoid an unnecessary shutdown of Davis-Besse without a corresponding public health and safety benefit. You stated that your staff reached this conclusion after consideration of the safety significance and potential consequences of extending the TS completion time and operating at a lower UHS level than required by the technical specifications. Your staff performed a qualitative risk assessment of operating Davis-Besse during the additional 42 hours given by this NOED with a lowered UHS level. You indicated that since no equipment was unavailable due to this condition, no risk calculations were necessary, and incremental conditional core damage probability and incremental conditional large early release probability were zero; hence, this NOED would result in no net increase in radiological risk to the public. You also stated that the requested NOED meets the criteria specified in the NRC Enforcement Manual, Appendix F, "Notices of Enforcement Discretion." NRC analysts independently corroborated this assessment.

To further mitigate risk, Energy Harbor committed to implementing a series of compensatory actions for the duration of the enforcement discretion period. These actions included:

- No other safety-related, technical specification, or Probabilistic Risk Assessment modeled equipment would be intentionally removed from service for surveillance tests or preventative maintenance activities until the NOED condition was exited.
- No discretionary switchyard activities would be allowed during the NOED period.
- The following systems would be protected based on protected equipment postings to ensure onsite power sources would not be challenged during the NOED period:
 - Emergency diesel generator 1
 - Emergency diesel generator 2
 - Station blackout diesel generator
 - Both trains of high and low voltage switchgear and
 - Support systems for the above (power, cooling controls)

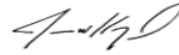
- In addition, the following protected equipment was already protected or would be protected to maintain defense in depth and would remain so for the duration of the NOED:
 - All service water pumps and flow paths
 - All component cooling water pumps and flow paths
 - All auxiliary feedwater pumps and flow paths
- Operational risk activities would not be allowed during the duration of the NOED condition.
- Temporary diesel-driven pumps with direct suction from Lake Erie, which Energy Harbor staff had already placed in service to discharge into the UHS, would remain in service during the NOED condition. This action reduced the likelihood of initiating events related to the UHS.

Based on the staff's evaluation of your request, the NRC has concluded that granting this NOED was consistent with the Enforcement Policy and staff guidance and had no adverse impact on public health and safety or the environment. Therefore, we intend to exercise discretion not to enforce compliance with TS 3.7.9, Required Action A.1 for the period from December 23, 2022, at 2:12 p.m., until December 25, 2022, at 2:12 p.m., provided that the UHS level remained above 558 feet. The enforcement discretion granted was modified from the licensee's request since the licensee had already entered TS 3.7.9, Condition A, when Energy Harbor officially made the NOED request. This modification was communicated to the licensee during the conference on December 23, 2022.

After the verbal approval for the enforcement discretion, the NRC staff noted that the conditions causing the need for this NOED no longer existed, causing you to exit from this NOED on December 24, 2022, at 11:58 a.m. As a result, the NOED terminated at 11:58 a.m., on December 24, 2022, within the enforcement discretion period. In addition, as discussed during the teleconference on December 23, 2022, the NRC staff agreed with your determination that a follow-up TS amendment was not necessary.

As stated in the NRC Enforcement Policy, the NRC will take action, to the extent that any violation was involved, for the root cause that led to the noncompliance for which this NOED was necessary. Per Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,



Signed by Kozal, Jason
on 12/30/22

Jason Kozal, Deputy Division Director
Division of Operating Reactor Safety

Docket No. 05000346
License No. NPF-3

Enclosure:
As stated

cc: Distribution via LISTSERV®

Letter to Terry Brown from Jason Kozal dated December 30, 2022.

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION (NOED) FOR DAVIS-BESSE NUCLEAR POWER STATION (EPID: I-2022-004-0043) – TECHNICAL SPECIFICATION 3.7.9, ULTIMATE HEAT SINK WATER LEVEL LIMIT

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