



*Davis-Besse Nuclear Power Station  
5501 N. State Route 2  
Oak Harbor, Ohio 43449*

*Terry J. Brown  
Site Vice President, Davis-Besse Nuclear*

*419-321-7676*

March 9, 2023  
L-23-059

ATTN: Document Control Center  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Davis-Besse Nuclear Power Station, Unit 1  
Docket Number 50-346, License Number NPF-3  
Response to Apparent Violation in NRC Inspection Report  
05000346/2022091; EA 23-002

This letter provides the Energy Harbor Nuclear Corporation's (Energy Harbor) reply to an Apparent Violation contained in Inspection Report 05000346/2022091 dated February 10, 2023. Energy Harbor's response is provided in the attachment to this letter. On February 17, 2023, Mr. Gerald M. Wolf of my staff verbally notified Ms. April Nguyen that Energy Harbor would be providing a written response to this Apparent Violation.

There are no regulatory commitments contained in this letter. If there are any questions or if additional information is required, please contact Mr. Robert W. Oesterle, Manager, Site Regulatory Compliance and Emergency Response, at (419) 321-7462.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry J. Brown", written over a horizontal line.

Terry J. Brown

GMW

Attachment: Reply to a Notice of Violation; EA-23-002

cc: Julio Lara, Director, Division of Operating Reactor Safety, NRC Region III  
NRC Region III Administrator  
NRC Resident Inspector  
NRR Project Manager  
Utility Radiological Safety Board

Attachment  
L-23-059

Davis-Besse Nuclear Power Station  
Reply to a Notice of Violation; EA-23-002

Page 1 of 6

Restatement of Violation

10 CFR Part 50.54(i) states, in part, that, except as provided in 55.13 of this chapter, the licensee may not permit the manipulation of the controls of any facility by anyone who is not a licensed operator or senior operator as provided in Part 55 of this chapter.

Title 10 CFR 55.53(h) states that the licensee shall complete a requalification program as described by Part 55.59 of this chapter.

Title 10 CFR 55.59(c)(1) states that the requalification program must be conducted for a continuous period not to exceed 2 years, and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs.

Title 10 CFR 55.59(c)(2) states, in part, that the requalification program must include replanned lectures on a regular and continuing basis throughout the license period.

From September 27, 2022 through December 2, 2022, the licensee permitted the manipulation of the controls of the facility by a licensed operator that had not adequately completed the requalification program. Specifically, from September 20 – December 2, 2022, the licensee excused a licensed operator from attending requalification training and evaluation activities due to the individual's pending retirement on December 9, 2022. Between September 27, 2022 and December 2, 2022, the individual performed licensed duties as the At-the-Controls (ATC) Operator on 7 shifts and as the Balance of Plant (BOP) Operator on 12 shifts. Since the licensed operator was no longer continuously participating in the facility licensee's NRC-approved requalification program, the individual did not meet a condition of the license as described in 10 CFR 55.53(h) and, therefore, was no longer permitted to perform the functions of a licensed operator.

This issue is being treated as an apparent violation.

(1) Reason for the Apparent Violation, or, if Contested, the Basis for Disputing the Apparent Violation:

Energy Harbor respectfully disagrees that a violation of NRC requirements occurred and asserts the operator in question continued to meet all requirements of his license.

The licensed operator training programs at the Davis-Besse Nuclear Power Station (DBNPS), including the Licensed Operator Requalification Program, are accredited by

the Institute of Nuclear Power Operations (INPO) to meet the approval requirements of 10 CFR 55.59(c). This accreditation ensures the programs and procedures meet or exceed the requirements and recommendations of ANSI N18.1-1971 Section 5.5, 10 CFR 50.120, and 10 CFR 55. National Academy for Nuclear Training document ACAD 07-001 Revision 1 (February 2021) is the latest guidance on how to establish a continuing training program for licensed personnel based on a systematic approach to performance-based training.

Energy Harbor Nuclear Operating Business Practice NOBP-TR-1271, Operator License Administration, outlines the processes used to maintain an NRC Reactor Operator or Senior Reactor Operator License. Section 4.3.3 of NOBP-TR-1271 requires Licensed Operators attend Licensed Operator Requalification Program required training and evaluation activities as scheduled, unless excused by the Operations Training Superintendent. Section 4.4.2 of NOBP-TR-1271 requires a Licensed Operator be immediately suspended from licensed duties if they miss a nominal six-week continuing training session and do not make up the training by the end of the following six-week continuing training session.

During the time period in question, the individual (reactor operator) in question remained a member of the accredited DBNPS Licensed Operator Requalification Program, and the program was conducted continuously as required by 10 CFR 55.59(c)(1). While Operations and Training Department management were aware the individual would not be attending the last two cycles of Licensed Operator Requalification Program training because of their pending retirement, the individual was not excused nor intended to be excused from attending training as the situation did not meet any of the examples listed in Section 4.5.4 of NOBP-TR-1271. Had the individual been excused, he would have been released from the requirement to complete the missed training cycles and maintained his license active until he retired from the company. The individual's missed training attendance was monitored, and Operations Management was notified in accordance with NOBP-TR-1271 to suspend him from license duties on December 2, 2022, upon missing the second consecutive training cycle.

10 CFR 55.59(a)(1) states that the requalification program developed by the facility licensee shall be conducted for a continuous period not to exceed 24 months in duration. Because the individual remained a part of and was compliant with the accredited DBNPS continuous Licensed Operator Requalification Program per 10 CFR 55.59(c) until removed from licensed duties on December 2, 2022, the requirements of 10 CFR 55.53(h) were met, and no violation of 10 CFR 50.54(i) occurred for the operator standing watch prior to being removed from duties.

It is noted that the apparent violation states there were 19 occurrences (seven while standing At the Controls/ATC watches and twelve while standing Balance of Plant/BOP watches) between September 27 and December 2, 2022, where the operator performed licensed duties without participating in requalification training. DBNPS Licensed Operator Requalification Program Training Cycle 22-03 was conducted between

September 5 and October 14, 2022, with the operator's assigned crew attending training the week of September 19-23. Based on logs as provided to the NRC during the inspection, one ATC and two BOP watches by the operator from September 27-29 are being counted as part of the 19 subject occurrences, which took place while Training Cycle 22-03 was still in progress. If these three watches are considered violations of 10 CFR 50.54(i) because the operator had not attended training when initially scheduled, then any flexibility within the six-week training cycle for personal or emergent plant needs will be eliminated.

(2) Corrective Steps Taken and Results Achieved:

The reactor operator was removed from licensed duties on December 2, 2022, after not attending the second consecutive requalification training cycle in accordance with the established Licensed Operator Requalification Program. The NRC was notified on December 13, 2022, in accordance with 10 CFR 50.74 that the operator had relinquished his license.

NOBP-TR-1271, Operator License Administration, was revised effective February 20, 2023, to add steps for the following:

- evaluate qualification revocation for someone who misses licensed operator continuing training who does not have a makeup plan for the missed training
- inform the Operations Manager and Operations Training Superintendent at the end of each training cycle of individuals who missed any required item, including makeup plans for the missed item.
- clarify attending licensed operator continuing training is a responsibility of licensed operators

(3) Corrective Steps That Will Be Taken:

Required reading will be issued to all Licensed Operators (including Operations Line Management), Operations Training personnel, and Licensed Operator Pipeline personnel to reiterate the requirements and responsibilities to maintain an Operating License. This required reading, to be completed by the end of April 2023, will also review the changes made to NOBP-TR-1271 as described above.

(4) Date When Full Compliance Will Be Achieved:

Because no violation of NRC requirements occurred, full compliance has been maintained.

Additional Information:

Should the NRC still conclude that a violation of NRC requirements occurred after considering the information provided above, Energy Harbor is providing additional information as to why such a violation should not be considered for escalated enforcement.

Under the traditional enforcement process the NRC assesses significance by assigning a severity level (SL) to violations subject to the NRC's enforcement authority. As described in the NRC Enforcement Policy, severity level designations reflect different degrees of significance depending on the activity area in which the severity level is designated:

- a. SL I violations are those that resulted in or could have resulted in serious safety or security consequences (e.g., violations that created the substantial potential for serious safety or security consequences or violations that involved systems failing when actually called on to prevent or mitigate a serious safety or security event).
- b. SL II violations are those that resulted in or could have resulted in significant safety or security consequences (e.g., violations that created the potential for substantial safety or security consequences or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious safety or security event).
- c. SL III violations are those that resulted in or could have resulted in moderate safety or security consequences (e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event).
- d. SL IV violations are those that are less serious, but are of more than minor concern, that resulted in no or relatively inappreciable potential safety or security consequences (e.g., violations that created the potential of more than minor safety or security consequences).
- e. Minor Violations are those that are less significant than a SL IV violation. Minor violations do not warrant enforcement action and are not normally documented in inspection reports. However, minor violations must be corrected.

Section 6.4.c of the NRC Enforcement Policy provides the following examples of Severity Level III violations for Licensed Reactor Operators:

1. A licensed operator, or a senior operator actively performing the functions covered by that position, is determined to be any of the following:

- (a) unfit for duty as a result of a confirmed positive test for drugs or alcohol at cutoff levels established by the licensee,
  - (b) under the influence of any prescription or over-the-counter drug as described in 10 CFR 55.53(j),
  - (c) in noncompliance with a condition stated on the individual's license, or
  - (d) unfit for duty as determined by a post event fatigue assessment required by 10 CFR 26.211(a)(3);
2. A licensed operator, or a senior operator actively performing the functions covered by that position, is inattentive to duty;
  3. A licensed operator or senior operator is involved in the use, sale, or possession of illegal drugs;
  4. A nonwillful compromise (see 10 CFR 55.49, "Integrity of Examinations and Tests") of an application, test, or examination required by 10 CFR Part 55, or inaccurate or incomplete information inadvertently provided to the NRC, subsequently contributes to the NRC making an incorrect regulatory decision...

The majority of examples of Severity Level III violations for licensed operators listed above are instances where the operator is physically incapable of performing their required duties due to being not fit for duty, being inattentive to duty, or involved in the use, sale, or possession of illegal drugs – issues that could have resulted in moderate safety consequences. Example 4.6.c.1, which is the closest related example to the issue described above, is for a noncompliance with a condition stated on the individual's license, not just the conditions of the license as captured in 10 CFR 55.53. The conditions stated on a license, as typically requested via NRC Form 396, "Certification of Medical Examination by Facility Licensee," provide restrictions for the licensed operator to ensure they are physically able to perform their required duties and include restrictions such as the use of corrective lenses, hearing aids, therapeutic devices, or taking of medication as prescribed to maintain medical qualifications.

The reactor operator in question had worked at the DBNPS for 42 years and held a Reactor Operator's License for 35 of those years. No errors were committed by the operator while on shift during the time period in question. While there are no matching examples that apply for SL IV violations within the current NRC Enforcement Policy, the failure of an experienced operator to attend two requalification training cycles does not meet the criteria or significance for more than a Severity Level IV violation, since it had no actual or potential safety consequences.

It is noted that changes to the NRC Enforcement Policy were drafted in November 2020 (NRC Agencywide Documents Access and Management System (ADAMS) Accession Number ML20297A235) that would directly apply to this event. In the proposed draft, Section 6.4 is modified to include the following examples:

- c. SL III violations involve, for example:
  - 2. a licensed operator actively performing the functions covered by that position commits an error and is in noncompliance with 10 CFR 55.53 requirements or a license condition(s) other than a medical condition.
- d. SL IV violations involve, for example:
  - 2. A licensed operator actively performing the functions covered by that position is determined to be: (a) in noncompliance with a medical condition stated on the individual's license; or (b) fails to notify the facility licensee of a change in their NRC Form 396 medical status; however, the applicable industry standard was not exceeded, and no error was committed.
  - 3. A licensed operator actively performing the functions covered by that position, does not commit an error and is in noncompliance with 10 CFR 55.53 requirements or a license condition(s) other than a medical condition.

These violation examples were proposed to update the Enforcement Policy to use a graded, performance-based approach to allow certain violations to be assigned a significance from SL I to IV and incorporate the performance attribute "error" into the violation examples. While these changes have not been implemented in the latest revision of the Enforcement Policy, they provide insight into the issue in question as being no more than a Severity Level IV issue.