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February 27, 2003

Docket Number 50-346

License Number NPF-3

Serial Number 2939

Mr. Samuel J. Collins, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Response to 10 CFR § 2.206 Petition Filed by Congressman Kucinich

Dear Mr. Collins:

FirstEnergy Nuclear Operating Company (FENOC) hereby responds to the Petition filed under 10 CFR § 2.206 by Congressman Dennis J. Kucinich (Petitioner), dated February 3, 2003. Petitioner requests the NRC to revoke FENOC's license to operate the Davis-Besse Nuclear Power Station (Davis-Besse). Petitioner requests, in the alternative, that the NRC mandate an independent verification of the Davis-Besse restart process -- a remedy previously requested by the Union of Concerned Scientists (UCS), which was denied by the NRC on October 15, 2002.

The Petition contains numerous allegations that are unsupported, incorrect or mischaracterize existing documentation. Furthermore, the Petition contains no significant new information, and merely repeats information already known to the NRC. The alleged basis for the Petition is FENOC's discovery last year of the reactor pressure vessel (RPV) head degradation at Davis-Besse and related activities. Obviously, this event is not new to either FENOC or the NRC. In fact, the Davis-Besse RPV head degradation and its root causes have been subject to extensive review, inspection, and investigation by FENOC and the NRC for almost a full year.

Petitioner claims that FENOC has intentionally withheld information from the NRC and engaged in deliberate misconduct. These claims are patently false. At the very least, Petitioner's accusations have grossly misinterpreted and misapplied the applicable legal standards.

As detailed more fully in the attachment, FENOC, on its own initiative, has launched multiple investigations into these matters, and carried them out under the oversight of the NRC. In addition, FENOC has taken, and continues to take, extensive and comprehensive corrective and

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preventive measures to remedy the problems and issues associated with the RPV head degradation event, and to ensure the continued safe operation of the plant. FENOC's internal investigations, including several probing and self-critical root cause analyses, demonstrate FENOC's willingness to comply with NRC requirements. The root cause analyses reports have been submitted to the NRC and are available to the public. Moreover, the self-initiation and implementation of a series of corrective and preventive measures related to the RPV head degradation and associated problems is compelling evidence of not only FENOC's willingness and ability to comply with NRC requirements, but also of FENOC's intent to enhance operations and incorporate industry "best practices."

The NRC, itself, has launched multiple inspections and investigations into the Davis-Besse RPV head degradation and related matters, including dispatching an Augmented Inspection Team (AIT), issuing a confirmatory action letter (CAL) and applying to the Davis-Besse restart the agency's most pervasive oversight process, Inspection Manual Chapter (IMC) 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems." In rejecting the earlier UCS Petition, the Director's Decision, page 8, considered the ongoing actions of the NRC, and found them "sufficient to verify the adequacy of the licensee's performance related to RPV head degradation issues and to reassure the public that all reasonable safety measures have been taken prior to plant restart." The NRC added that "[t]he combined efforts of the AIT and the IMC 0350 Oversight Panel will adequately identify and evaluate the technical and programmatic issues at Davis-Besse." The Petition presents no new issues or information that would warrant a change of position on the part of the NRC.

In short, the present Petition simply revisits issues and facts already known to and under review by the NRC, contains baseless and incorrect statements, and does not account for the numerous actions by both FENOC and NRC. Accordingly, as explained in greater detail in the attachment, the Petition does not articulate a sufficient basis to support NRC action. Therefore, the Petition should be denied in its entirety.

Sincerely,



SPF/laj

Attachments

cc: Mr. J. E. Dyer, Regional Administrator, NRC Region III
Mr. J. B. Hopkins, DB-1 NRC/NRR Senior Project Manager
Congressman Dennis J. Kucinich
Mr. C. S. Thomas, DB-1 NRC Senior Resident Inspector
Mr. William D. Travers, NRC Executive Director for Operations
U.S. Document Control Desk
Utility Radiological Safety Board

ATTACHMENT

RESPONSE TO § 2.206 PETITION

INTRODUCTION

On February 3, 2003, Congressman Dennis J. Kucinich (Petitioner) filed a Petition under 10 CFR § 2.206 requesting the NRC to revoke FirstEnergy Nuclear Operating Company's (FENOC) license to operate the Davis-Besse Nuclear Power Station (Davis-Besse). Petitioner requests, in the alternative, that the NRC mandate an independent verification of the Davis-Besse restart process -- a remedy previously requested by the Union of Concerned Scientists (UCS), which was denied by the NRC on October 15, 2002 (DD-02-01). FENOC hereby responds to the Petition.

The Petition, pages 1-2, alleges that FENOC:

- 1) has admittedly operated the plant in violation of NRC rules and regulations and its own operating license;
- 2) has admittedly failed to observe safety standards necessary to protect health and to minimize danger to life or property; and
- 3) has deliberately withheld information from the NRC and fraudulently misrepresented plant conditions in order to continue to operate the plant in an unsafe manner.

For the reasons discussed in more detail below, the NRC should deny the Petition. Specifically:

- The Petition presents no significant new information not previously known by the NRC. Instead, the Petition merely repeats information already known to the NRC. The alleged basis for the Petition is FENOC's discovery last year of the reactor pressure vessel (RPV) head degradation at Davis-Besse and related activities. Obviously, this event is not new to either FENOC or the NRC. In fact, the Davis-Besse RPV head degradation and its root causes have been subject to extensive review, inspection, and investigation by FENOC and the NRC for almost a full year.
- The Petition contains assertions that are baseless, incorrect or mischaracterize existing documents. In particular, Petitioner's claims that FENOC has intentionally withheld information from the NRC and engaged in deliberate misconduct are patently false. At the very least, Petitioner's accusations have grossly misinterpreted and misapplied the applicable legal standards.
- The Petition requests relief that is unwarranted and contrary to NRC precedent and the Petition does not account for numerous corrective actions and improvements being implemented by FENOC or the actions taken by the NRC. FENOC, on its own initiative, has launched multiple investigations into these matters. In addition, FENOC has taken, and

continues to take, extensive and comprehensive corrective and preventive measures to remedy the problems and issues associated with the RPV head degradation event, and to ensure the continued safe operation of the plant. The self-initiation and implementation of a series of corrective and preventive measures related to the RPV head degradation and associated problems is compelling evidence of FENOC's willingness and ability to comply with NRC requirements. The NRC, itself, has launched multiple inspections and investigations into the Davis-Besse RPV head degradation and related matters, including dispatching an Augmented Inspection Team (AIT), issuing a confirmatory action letter (CAL) and subjecting Davis-Besse's restart to the agency's most pervasive oversight processes, Inspection Manual Chapter (IMC) 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems."

DISCUSSION

I. The Petition Presents No New Information

According to NRC guidance, the NRC should deny a 2.206 Petition where the issues raised are already the subject of NRC staff review and evaluation and the petition presents no significant new information.¹ The NRC has repeatedly denied 2.206 petitions where the issues raised had already been, or were being, investigated by the NRC, and the petitioner presented no new information in support of its request of which the NRC was not already aware.²

Applying the NRC's own guidance and precedent, the Petition must fail. The Petition does not raise a single new issue or present any new facts that are not already known to, and currently under review by, the NRC. In fact, the NRC is already aware of the information presented in the Petition, and has investigated, or is currently investigating, the concerns raised by Petitioner. The Petition presents nothing new that would warrant a change in NRC's approach.

As a basis for its requests, the Petition cites a number of underlying events. As indicated below, NRC is fully aware of all of these events.

- Section II of the Petition states that NRC has identified ten violations, citing NRC AIT Follow-Up Special Inspection Report No. 02-08. Obviously, this provides no new information to the NRC.

¹ Management Directive 8.11, Part III, Section C(2)(b).

² *Envirocare*, DD-97-2, 45 NRC 63, 68-69 (Feb. 5, 1997); *Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2)*, DD-85-11, 22 NRC 149, 152-53 (July 29, 1985).

- Section II.A of the Petition states that FENOC discovered a hole in Davis-Besse's RPV head, citing FENOC's own licensee event report, LER 2002-002-000 (Apr. 29, 2002), to the NRC. Obviously, this provides no new information to the NRC.
- Section II.B of the Petition states that Davis-Besse did not perform a modification to install access ports in the service structure for the RPV head. NRC is aware of this fact, as indicated by NRC AIT Inspection Report Nos. 02-03, pp. 18-19, and 02-08, p. iii.
- Section II.C of the Petition states that Davis-Besse did not fully inspect and clean the RPV head. NRC is aware of this fact, as indicated by NRC AIT Inspection Report Nos. 02-03, p. iii, and 02-08, p. ii.
- Section II.D of the Petition states that Davis-Besse did not inspect, correct or identify Control Rod Drive Mechanism (CRDM) nozzle leakage. NRC is aware of this fact, as indicated by NRC AIT Inspection Report Nos. 02-03, p. iii, and 02-08, p. ii.
- Section II.E of the Petition states that Davis-Besse did not find the cause of clogged air filters on radiation detectors. NRC is aware of this fact, as indicated by NRC AIT Inspection Report Nos. 02-03, p. iii, and 02-08, p. iii.
- Section II.F of the Petition states that, in the fall of 2001, FENOC requested the NRC to defer inspection of the CRDM nozzles in response to NRC Bulletin 2001-01. NRC is aware of this information, as indicated by the very nature of the allegation and by the Office of Inspector General report on "NRC's Regulation of Davis-Besse regarding Damage to the Reactor Vessel Head," Case No. 02-03S (Dec. 30, 2002).
- Section II.G of the Petition refers to other events that are known to the NRC, including the following:
 - contamination of several workers (NRC Special Inspection Report No. 02-16, p. 2);
 - problems with the initial inspection of the extent of condition of boric acid deposition in the containment (NRC Special Inspection Report No. 02-09, p. 1);
 - allegations by members of the public at a meeting of the NRC 0350 Panel regarding overtime at Davis-Besse (Public Meeting (September 17, 2002), Tr. 36-37);
 - concerns regarding the readiness of the polar crane, which were discussed at the September 17, 2002 meeting of the NRC's 0350 Panel (NRC/FENOC Meeting (September 17, 2002), Tr. 12, 14-29);
 - problems with the containment emergency sump, which were discussed with the NRC in a public meeting on November 26, 2002, and have been reported to the NRC in LER 2002-05;
 - rust stains on the bottom of the reactor vessel, which were discussed in a public meeting with the NRC on November 26, 2002; and

- safety culture and safety conscious work environment issues, which were discussed in public meetings with the NRC on September 18, 2002 and January 30, 2003.

Since NRC is fully aware of the underlying events cited in the Petition, the Petition presents no significant new information and should be denied.

There is sound precedent for denial of the Petition. The Director of Nuclear Reactor Regulation (NRR) previously denied a 2.206 petition, much like the one at issue here, that was filed against Indian Point 2 (IP2), concluding that “the information contained in the petition and the supplement did not warrant NRC Staff action to suspend or revoke the operating license for IP2.”² In the IP2 case, the petitioners had asserted that corporate mismanagement had allowed the plant to operate out of compliance with technical specifications; that senior management deliberately chose to continue operating the plant in that condition, in spite of NRC communications and technical guidance; that deferral of an inspection led to the failure event; and that the NRC’s decision to allow the deferral was based on data provided by the licensee which was later deemed inaccurate. To support the request, petitioners had referenced or provided NRC inspection reports, licensee event reports, correspondence between NRC Staff and the licensee, and licensee Condition Reports (CR) supplemented by an UCS evaluation of the CRs, and other similar documents. The Director found the petitioners’ purported bases and information to be lacking: “The Director of NRR did not grant the requested action because the findings and issues that provided the basis for the requested action had all been evaluated previously during NRC’s inspections and assessments of IP2,” and “the findings from the NRC’s assessment of IP2 did not warrant prohibiting the restart of IP2.”⁴ The Director summarily disposed of petitioners’ concerns, observing that they were, for the most part, the same concerns the NRC had been reviewing and monitoring for some time, using the Reactor Oversight Process (ROP) to assure adequate protection of public health and safety.⁵ For very similar reasons, the NRC should deny Congressman Kucinich’s Petition.

II. The Petition Contains Assertions That Are Incorrect And Baseless

In addition to presenting no new information, the Petition contains a number of factual and conclusory assertions that are incorrect or inaccurate, and mischaracterize findings and conclusions presented in both NRC’s and FENOC’s reports.

For example, Petitioner repeatedly asserts that FENOC “deliberately” or “willfully” violated NRC requirements, and engaged in “deception,” “lied” or “fraudulently misrepresented”

² *Entergy Nuclear Operations, Inc. et al. (Indian Point, Unit 2)*, DD-01-4, 54 NRC 326, 327 (Nov. 21, 2001).

⁴ *Id.*, at 331.

⁵ *Id.*, at 331-36.

information to, or “hid” or “deliberately withheld” information from the NRC. The Petitioner has provided no information to support these allegations. Petition pp. 1-2, 4, 6, 8, 17-18, 27-28. These charges are baseless.

FENOC has conducted an extensive investigation into the roles of individuals relative to the RPV head degradation at Davis-Besse and inaccuracies in associated documentation, and whether there was any deliberate or willful misconduct on the part of any of those individuals. FENOC concluded that neither the RPV head degradation event nor inaccuracies in associated documentation were the result of any deliberate or willful misconduct, but rather the result of human error caused by a lack of diligence, attention to detail, and a questioning attitude on the part of several individuals. FENOC has taken appropriate personnel action to address these issues. Moreover, the NRC Office of Investigations (“OI”) is conducting an investigation into whether wrongdoing occurred in connection with the RPV head degradation or inaccuracies in associated documentation. OI’s investigation is ongoing, and no findings have been published yet.

In summary, the Petition provides absolutely no information to support any claim that Davis-Besse willfully or deliberately violated any regulatory requirements. This claim is baseless, and therefore does not provide any grounds for revocation of the license for Davis-Besse.

Additionally, the Petition contains a number of statements that are incorrect or mischaracterize FENOC and NRC documents. For example:

- The Petition alleges that the violations related to the RPV head posed “considerable consequence to public safety.” Petition, p. 6. In fact, the violations had no impact on the public health and safety. The RPV head was not breached, there was no accident, and there was no release of radioactivity to the environment.
- The Petition alleges that FENOC knew of the boric acid deposits, increase in reactor coolant system (RCS) leakage, clogged filters, and an inability to fully inspect or clean the RPV head, and yet “hid or refused to disclose this information to the NRC” in 2001. Petition, pp. 7-8. In actuality, in 2001, FENOC did inform the NRC of boric acid deposits on the RPV head and its inability to fully inspect or clean the head.⁶ Furthermore, while FENOC did not discuss the increases in RCS leakage and the clogged filters, FENOC did not at that time believe there was any connection between these events and the integrity of the RPV head.⁷

⁶ FENOC Supplemental Responses to NRC Bulletin 2001-01, Serial No. 2744, dated Oct. 30, 2001, pp. 1-2 & Atch 1; and Serial No. 2745, dated Nov. 1, 2001, Atch. 1, pp. 1-2, 4.

⁷ Root Cause Analysis Report, “Significant Degradation of the Reactor Pressure Vessel Head,” dated April 15, 2002, p. 48.

- The Petition states that there is no record from 1996 showing that the RPV head was cleaned. Petition, p. 10. In fact, the very report referenced by the Petition, PCQAR 96-0551, indicates that attempts were made at cleaning the head, but the attempts were not fully successful and that some boric acid was left on the head.⁸
- The Petition states that, in 2001, Davis-Besse would not agree to shut down the plant to identify leaks in the CRDM nozzles. Petition, p. 13. In actuality, FENOC did agree to shut down the plant six weeks earlier than planned to perform the inspections of the CRDM nozzles.⁹
- The Petition states that Davis-Besse ignored clogging of the air filters on the radiation monitors. Petition, p. 14. In actuality, Davis-Besse did not ignore the clogging. As discussed in FENOC's technical root cause analysis report, provided to the NRC on April 18, 2002, the clogging was recognized as being symptomatic of RCS leakage and "significant efforts" were made to identify the source of the leakage, without success.¹⁰
- The Petition alleges that Davis-Besse knew that there was a high likelihood of cracked and leaking CRDM nozzles, "a condition that requires immediate shut-down." Petition, p. 19. In actuality, the Technical Specifications for Davis-Besse do not require a shutdown based upon a likelihood of RCS boundary leakage -- instead, they only require shutdown in the event of known leakage.¹¹

These are just a few of the many examples of incorrect statements in the Petition.

Additionally, the Petition is replete with half-truths and incomplete assertions. For example:

- The Petition states that the Office of Inspector General concluded that NRC was overly concerned with the financial impact of a shut-down and less concerned with safety. Petition, p. 19. However, the Petition fails to give substantive consideration to the subsequent

⁸ PCAQR 96-0551, pp. 6, 9.

⁹ FENOC Supplemental Response to NRC Bulletin 2001-01, Serial No. 2747, dated Nov. 30, 2001, p. 2 & Atch 8, p. 2.

¹⁰ Root Cause Analysis Report, "Significant Degradation of the Reactor Pressure Vessel Head," dated April 15, 2002, p. 36.

¹¹ Letter from Richard A. Meserve, NRC Chairman, to Hubert T. Bell, NRC Inspector General, dated January 8, 2003, Atch, pp. 2-3.

memorandum from NRC Chairman Meserve to the Inspector General, dated January 8, 2003, which refutes those conclusions.¹²

- The Petition alleges that FENOC has not rehabilitated itself since the discovery of the hole in the RPV, citing contamination of four workers. However, as clearly stated in NRC Special Inspection Report 02-16 (which was cited by the Petition), this incident occurred on February 20, 2002, which was before the degradation was discovered, and the associated violations “do not appear to represent a current safety issue based on the corrective actions initiated by [FENOC].”¹³
- The Petition cites problems with FENOC’s initial inspections of the containment to determine the extent of condition of the boric acid deposition. Petition, p. 20. However, the Petition fails to mention or consider NRC Inspection Report 02-12, which found that FENOC had taken “appropriate corrective actions” for those problems and that FENOC’s subsequent inspections have been “effectively implemented.”¹⁴
- The Petition states that FENOC allowed work on the containment crane to go unfinished because FENOC was overly concerned with staying on schedule and less concerned about quality. Petition, pp. 21-22. However, as discussed by FENOC in its meeting with the NRC 0350 Panel on September 17, 2002, FENOC actually imposed a stop work order on the crane to ensure that the work was completed in a quality manner.¹⁵
- The Petition mentions problems with the containment emergency sump and rust stains on the bottom of the RPV. Petition, pp. 22-23. However, the Petition fails to mention the substantial modification that FENOC is making to upgrade the capacity of the sump and the installation of leakage monitors for the RPV, both of which place FENOC in an industry leadership position in the United States with respect to such methods.¹⁶

¹² Letter from Richard A. Meserve, NRC Chairman, to Hubert T. Bell, NRC Inspector General, dated January 8, 2003, p. 1 & Atch, p. 1.

¹³ Letter from John A. Grobe, Chairman, Davis-Besse Oversight Panel, to Lew W. Myers, COO FENOC, transmitting NRC Special Inspection Report Nos. 02-16 and 02-06, dated Jan. 7, 2003, p. 3.

¹⁴ Letter from John A. Grobe, Chairman, Davis-Besse Oversight Panel, to Lew W. Myers, COO FENOC, transmitting NRC Special Inspection Report No. 02-12, dated Nov. 29, 2002, p. 1 & Encl., p. 13.

¹⁵ NRC/FENOC Meeting (Sept. 17, 2002), Tr. 12, 14-29.

¹⁶ NRC/FENOC meeting to discuss the Davis-Besse Reactor Vessel Incore Monitoring Instrumentation Nozzles, Inspection, and Potential for Leakage (Nov. 26, 2002).

- The Petition claims that there “continues to be an admitted lack of a safety culture at the Davis-Besse plant,” citing a survey taken by FENOC six months after the shutdown. Petition, pp. 23-24. However, FENOC has not “admitted” a lack of safety culture. To the contrary, as discussed with the NRC in the public meeting on January 30, 2003, while some aspects of FENOC’s performance did not display an adequate safety focus, FENOC personnel were identifying problems with the RPV head, which is a sign of a good safety culture. Furthermore, although the results of FENOC’s survey of safety conscious work environment (as distinct from safety culture) did identify some weaknesses, this survey was conducted just shortly after FENOC’s new management team was put in place. A more recent survey by FENOC’s Nuclear Quality Assessment organization shows substantial improvement, as discussed in a recent meeting with NRC’s 0350 Panel on February 11, 2003 (after the Petition was filed).
- The Petition alleges that, according to the NRC, FENOC has “continued to operate in a sloppy and unsafe manner in order to restart the facility as quickly as possible.” The Petition cites a newspaper article from September 18, 2002, as the basis for this allegation. Petition, p. 24. However, the cited newspaper article does not contain such a statement. Furthermore, FENOC has on several occasions extended the current outage in order to accomplish all of its activities to ensure the safety of restart, and in a recent meeting with NRC’s 0350 Panel on February 11, 2003 (after the Petition was filed), the Chairman of the Panel stated that FENOC was making progress on every front.

In summary, the Petition contains numerous statements that are false or baseless, and numerous other statements that are half-truths. In particular, the Petition provides absolutely no basis for the allegation that FENOC committed deliberate and willful violations of regulatory requirements. Since this allegation forms the principal basis for the Petition, the Petition should be denied.

III. The Requested Relief Is Unwarranted and Contrary to NRC Precedent

The Petition requests the NRC to revoke FENOC’s license to operate Davis-Besse, observing that such action “will place the burden of proof on [FENOC] to show that the facility complies with all regulations and guidelines, and will force the Davis-Besse facility to undergo the exhaustive and meticulous inspections, tests and inquiries necessary to obtain a new operating license.”¹⁷ Such an action would be both unwarranted and unprecedented. The NRC has never revoked an operating license for a production or utilization facility.¹⁸ All the license

¹⁷ Petition, at 3.

¹⁸ The NRC has never re-licensed an existing facility, and we are unaware of any process or procedure for re-licensing an existing facility.

revocation cases cited by Petitioner involve materials licenses and are inapposite and unpersuasive.

Contrary to Petitioner's assertions, neither the Atomic Energy Act of 1954, as amended (AEA), nor NRC's implementing regulations require NRC to take such enforcement action.¹⁹ Rather, the governing statute and regulations make plain that NRC's authority to revoke a license is wholly discretionary. In the way of guidance, the NRC Enforcement Policy provides some specific examples of circumstances which may warrant a revocation order, including:

- 1) when a licensee is *unable or unwilling* to comply with NRC requirements;
- 2) when a licensee *refuses* to correct a violation;
- 3) when a licensee *does not respond* to a Notice of Violation (NOV) where a response was required;
- 4) when a licensee *refuses* to pay an applicable fee under the Commission's regulation.²⁰

These examples demonstrate that a violation, even one severe enough for enforcement action or civil penalty, is not sufficient in and of itself to warrant revocation of an operating license. There must be some refusal on the part of the licensee to correct the violation or to respond to the NRC. In denying a § 2.206 petition to shut down Sequoyah Fuels' Gore, Oklahoma facility, the NRC determined:

With regard to the [subject incident], the NRC has thoroughly investigated the causes and impact of this occurrence and has taken or is taking appropriate enforcement action. While this incident was indeed serious, and violations of NRC requirements have occurred, these violations do not in and of themselves warrant suspension or revocation of [Sequoyah Fuels'] license. Not every violation of the Commission's regulations or licenses compels suspension or revocation of a license.²¹

Even in cases where the violation was found to be deliberate or willful, the NRC has refused to issue a revocation order. In *Northeast Utilities*, the NRC Staff had found that the licensee willfully submitted inaccurate or incomplete information to the NRC, the Department of

¹⁹ See AEA § 186, 42 USC § 2236; 10 CFR § 50.100.

²⁰ NRC Enforcement Policy, Section VI.D.3 (emphasis added).

²¹ *Sequoyah Fuels*, 24 NRC at 607. See also *Northeast Utilities (Millstone Nuclear Power Station, Units 1, 2, and 3)*, Final Director's Decision, DD-00-1, 51 NRC 71 (Feb. 15, 2000); Partial Director's Decision, DD-97-21, 46 NRC 108 (Sept. 12, 1997) (Despite finding violations of NRC requirements, the NRC Staff denied petitioners' request for license revocation, concluding that the actions the NRC required the licensee to complete prior to restart, with which the licensee complied, adequately addressed the petitioners' concerns.).

Justice (DOJ) had determined that the licensee had deliberately submitted inaccurate and incomplete information to the NRC, and the licensee had pleaded guilty in Federal Court to nineteen violations of the AEA, including violations involving material false statements made to the NRC.²² Nevertheless, the NRC determined that license revocation was not warranted, citing, among other things, the licensee's completion of commitments, effective corrective actions, and changes in plant management and operation.²³

To warrant revocation, the licensee's conduct must be marked by a continuing, demonstrated inability or obstinate refusal to comply with NRC requirements or orders. Applying this principal in the *Sequoyah Fuels* case, the NRC ruled:

[T]he Licensee's [actions] and its general history do not reflect an "inability" to comply with regulatory requirements, or provide a basis for granting the specific relief requested by the petitions. While it is true that over the past 15 years, violations have occurred, these violations do not reflect an incapability or unwillingness on the part of the Licensee to abide by NRC requirements or provide a sufficient basis for revocation or indefinite suspension of the license.²⁴

Contrary to Petitioner's assertions, there is no indication whatsoever of any inability or unwillingness to comply with NRC requirements on the part of FENOC that would warrant the revocation of its operating license. In responding to the RPV head degradation, FENOC has continued to demonstrate its ability and willingness to comply with NRC requirements.

A. FENOC's Ability and Willingness To Comply with NRC Requirements

On March 6, 2002, FENOC discovered, during an inspection of the CRDM and other vessel head penetration nozzles at Davis-Besse, indications of nozzle cracking and corrosion of the RPV head. FENOC promptly reported the condition to the NRC. FENOC then launched the first in a series of comprehensive internal investigations into the event and its root causes, including, among others, a technical root cause analysis, a management and human performance root cause analysis, and an operational root cause analysis, all of which were documented in reports submitted to the NRC. FENOC principal reports and reviews include:

- Root Cause Analysis Report, "Significant Degradation of the Reactor Pressure Vessel Head" (April 15, 2002).

²² 51 NRC at 73-74.

²³ *Id.*, at 74.

²⁴ 24 NRC at 606-07.

- Root Cause Analysis Report, “Failure to Identify Significant Degradation of the Reactor Pressure Vessel Head” (August 13, 2002).
- Assessment of FENOC Company Nuclear Review Board (August 13, 2002).
- Root Cause Analysis Report, “Significant Degradation of the Reactor Pressure Vessel Head,” Rev. 1 (August 27, 2002).
- Root Cause Analysis Report, “Failure in Quality Assurance Oversight to Prevent Significant Degradation of Reactor Pressure Vessel Head” (September 10, 2002).
- Root Cause Analysis Report, “Lack of Operations Centrality in Maintaining, Assuring, and Communicating the Operational Safety Focus of Davis-Besse and Lack of Accountability of Other Groups to Operations in Fulfilling That Role” (November 22, 2002).
- Root Cause Analysis Report, “Ineffective Corrective Action Problem Resolution Human Performance and Implementation” (November 26, 2002).
- “Evaluation of Corporate Management Issues Arising from Degradation of the Reactor Pressure Vessel Head” (December 18, 2002).
- Root Cause Analysis Report, “Assessment of Engineering Capabilities” (January 3, 2003).

Consistent with these assessments, FENOC has taken a number of actions to correct programmatic and management weaknesses identified at Davis-Besse. FENOC has changed and added senior management to ensure rigorous oversight and long-term sustainable performance at Davis-Besse. Specifically, FENOC created new Company-level leadership positions, including a Chief Operating Officer, a Vice President of Oversight reporting directly to the President of FENOC and the Nuclear Oversight Committee of the FENOC Board of Directors, and an Executive Vice President of Engineering and Services. Additionally, FENOC has substantially changed the Davis-Besse senior leadership team, including the Site Vice President and Directors. The new senior leadership team has made numerous changes to manager-level positions, including new managers in the Engineering, Maintenance, Corrective Action Program, and Quality Assessment functions. The new management team has, in turn, initiated a Management and Human Performance Excellence Plan, as well as a more detailed Management and Human Performance Improvement Plan, designed to upgrade management and performance of the entire Davis-Besse organization.

As a result of its various investigations and reviews, FENOC developed and is in the process of implementing comprehensive corrective and preventive actions related to the degradation of the RPV head and its causal factors. The NRC has determined FENOC’s

corrective actions for the RPV head degradation to be acceptable.²⁵ FENOC also has developed a Return to Service Plan, prescribing the Company's planned course of action for Davis-Besse's safe and reliable return to service. This course of action includes those actions necessary to address each of the six sets of commitments in the CAL, the near-term corrective and preventive actions necessary to address the causal factors associated with the RPV head degradation event, and the longer term actions necessary to assure that the underlying causal factors remain corrected and that continued safe performance at Davis-Besse is sustained.

The Plan consists of seven Building Blocks Plans, designed to support safe and reliable restart of the plant and to ensure sustained performance improvements.

- Reactor Head Resolution Plan to restore the degraded Davis-Besse RPV Head such that it is in compliance with appropriate Commission rules and industry requirements.
- Containment Health Assurance Plan to perform inspections, evaluations of containment Systems, Structures and Components (SSCs) and assure completion of required remediation activities prior to restart.
- System Health Assurance Plan to perform reviews of system health prior to restart to ensure that the condition of the plant is sufficient to support safe and reliable operation.
- Program Compliance Plan to perform a review of applicable plant programs to ensure that the programs are fulfilling required obligations and are sufficient to support the restart and safe operation of the Davis-Besse.
- Management and Human Performance Excellence Plan to conduct a thorough assessment of the management and organizational issues surrounding the degradation of the RPV head, and create a comprehensive leadership and organizational development plan for the site.
- Restart Test Plan to perform restart testing necessary to ensure the integrity of the RCS and the containment, and to evaluate proposed testing of systems and components affected by RCS leakage and boric acid deposits.
- Restart Action Plan to administer the identification, coordination, monitoring and closure of actions required to meet all Company-identified objectives and requirements under the Davis-Besse Return to Service Plan.

²⁵ NRC Inspection Report 02-15. NRC is still evaluating FENOC's more broad-based corrective actions.

These Plans require program, system, and functional area reviews, which provide the basis for assurance that the plant equipment, systems, programs, and people will support safe and reliable restart and sustained operation. Each of these plans has been made available for NRC review, and is being subject to NRC inspections.

FENOC senior leadership is directly involved in the direction and oversight of Davis-Besse's return to service. Pursuant to the Return to Service Plan, FENOC established a dedicated restart organization, which includes not only reorganized and realigned internal senior leadership, but also four separate and distinct review and verification teams.

- A Restart Overview Panel has been established, consisting of FENOC and non-FENOC executives and independent industry experts, to provide additional oversight and review of plant activities being performed as part of the Return to Service Plan and its component Building Block Plans.
- An Engineering Assessment Board has been established, consisting of independent industry experts and members of FENOC's engineering organization to review engineering products and programs developed under several of the Building Blocks.
- A Restart Senior Management Team has been established, consisting of the FENOC Chief Operating Officer, the Plant Manager, the Directors of Nuclear Engineering, Support Services, and Work Management, and an independent consultant, to provide senior management review and oversight of restart activities.
- A Restart Station Review Board has been established, consisting of the Director of Support Services and site managers, to identify and classify restart required actions, based on a review of Condition Reports, Corrective Actions, and other documents.

Davis-Besse management is being deliberative and conservative in implementing the Return to Service Plan and will not return the Station to service until it is satisfied that the Station can be returned to power and operated safely and reliably over the long-term. Upon completion of the restart actions described in this Plan, FENOC will submit its Integrated Restart Report which will summarize the root cause determination, extent of condition evaluations and corrective actions completed and planned to prevent recurrence. Prior to FENOC finalizing its decision to enter operating Mode 2, FENOC will meet with NRC to discuss completed and planned actions as described in this Plan and to provide the basis for restart.

All of the foregoing actions represent a significant and comprehensive FENOC response to the RPV head degradation issue. In promptly taking action to identify and correct the problems and root causes discovered at the site and in going forward with its restart action plan, FENOC has consistently demonstrated its ability and willingness to comply with applicable NRC requirements. Recognizing this, the NRC has allowed Davis-Besse to pursue restart, under the

enhanced oversight and monitoring of the NRC's IMC 0350 process, and has determined and expressly stated that this process adequately protects the public health and safety.²⁶

B. FENOC's Efforts Exceed NRC Requirements

Not only has FENOC demonstrated its willingness and ability to comply with NRC requirements, FENOC is taking several actions that exceed NRC requirements. For instance, FENOC has taken the lead in the industry by pursuing the installation of a new emergency sump. The proposed sump modification will increase the surface area of the sump strainers in the reactor containment to ensure that the strainers do not get clogged by debris which might collect at the bottom of the containment. This sump modification, which was not required by the NRC, was initiated by FENOC to improve the plant's design safety margin. This modification was discussed in detail with the NRC at a public meeting on November 26, 2002.

FENOC will also be conducting a special seven-day test of the reactor cooling system at normal operating pressure to determine if the system is leak tight. This test will include a comprehensive visual inspection of the bottom of the reactor vessel to identify any signs of leakage. To the knowledge of FENOC, this is the first time that any licensee has conducted such a test and inspection. Additionally, FENOC is installing a leak monitoring system for the reactor vessel, a move which is unprecedented in the U.S. nuclear power industry. These actions were discussed in detail with the NRC at a public meeting on November 26, 2002.

In addition, FENOC has established a Safety Culture Model as a means for improving and monitoring the safety culture at Davis-Besse. FENOC's plans include a formal assessment of safety culture by an independent expert, and periodic ratings of the various attributes within FENOC's Safety Culture Model. NRC staff met with FENOC officials in a public meeting on January 30, 2003 to discuss the status of the company's evaluation of safety culture issues at the plant level, and its programs to address those issues.

In summary, not only has FENOC demonstrated its willingness and ability to comply with NRC regulations, it has demonstrated its willingness to exceed NRC regulations. Therefore, there is no basis for revocation of the license for Davis-Besse.

C. NRC Oversight Is Sufficient To Assure the Public Health and Safety

The NRC Staff, both regional and headquarters, has been very active with respect to the degradation of the reactor vessel head at Davis-Besse and FENOC's corrective actions. For example, on March 12, 2002, less than a week after FENOC discovered and reported the Davis-Besse RPV head degradation, the NRC dispatched an AIT to Davis-Besse to investigate the facts and circumstances that led to the event. The NRC also issued a CAL to Davis-Besse on

²⁶ Director's Decision (DD-02-01), at 8.

March 13, 2002, (as revised on May 15, 2002) to which FENOC responded, committing to the following six sets of actions requiring implementation prior to restart:

- (1) Quarantine components or other material from the RPV head and CRDM nozzle penetrations that are deemed necessary to fully address the root cause of the occurrence of degradation of the leaking penetrations. Prior to implementation, plans for further inspection and data gathering to support determination of the root cause will be provided to the NRC for review and comment.
- (2) Determine the root cause of the degradation around the RPV head penetrations, and promptly meet with the NRC to discuss this information after you have reasonable confidence in your determination.
- (3) Evaluate and disposition the extent of condition throughout the reactor coolant system relative to the degradation mechanisms that occurred on the RPV head.
- (4) Obtain NRC review and approval of the repair or modification and testing plans for the existing RPV head, prior to implementation of those activities. Prior to restart of the reactor, obtain NRC review and approval of any modification and testing activity related to the reactor core or reactivity control systems. If the reactor vessel head is replaced in lieu of repair or modification, the replacement must comply with appropriate Commission rules and industry requirements.
- (5) Prior to the restart of the unit, meet with the NRC to obtain restart approval. During that meeting, we expect you will discuss your root cause determination, extent of condition evaluations, and corrective actions completed and planned to repair the damage and prevent recurrence.
- (6) Provide a plan and schedule to the NRC, within 15 days of the date of this letter, for completing and submitting to the NRC your ongoing assessment of the safety significance for the RPV head degradation.

The CAL also requires FENOC to meet with the NRC to discuss the root cause, extent of condition, and corrective and preventive actions, and to obtain NRC's prior written approval before restart. FENOC's response to the CAL is incorporated in its Return to Service Plan (Rev. 3), which describes FENOC's course of action for a safe and reliable return to service, and includes actions necessary to address each of the commitments contained in the CAL.

On April 29, 2002, the NRC notified FENOC that it would be invoking the IMC 0350 process. Shortly thereafter, on May 3, 2002, the NRC set up the Davis-Besse IMC 0350 Panel, subjecting the Davis-Besse restart to even greater NRC oversight and monitoring. The Panel is chartered to coordinate and oversee NRC activities necessary to ensure that all corrective actions deemed necessary for safe operation are taken before the plant is permitted to restart, and that

Davis-Besse maintains high safety and security standards once it resumes operation. As part of determining if plant corrective actions are adequate to support restart, the Panel will evaluate FENOC's Return to Service Plan and its implementation.

A series of NRC inspections are being performed under the direction of the IMC 0350 Panel to assess and verify the adequacy of FENOC's Return to Service Plan activities for each of FENOC's seven building blocks. These inspections include NRC staff review of the work performed by FENOC, plus independent inspections by NRC staff of each of the building blocks.

The 0350 Panel will only consider recommending that Davis-Besse resume operations when the plant has demonstrated its readiness to operate safely. Notably, the 0350 Panel has established a Restart Checklist, which provides a comprehensive list of actions which must be completed for restart. The Panel continues to hold monthly public meetings with FENOC to review the status of activities associated with RPV head degradation issues, including related technical, programmatic, human performance and management issues, and FENOC's corrective and preventive actions.

Through these processes, the NRC is providing enhanced oversight of FENOC's corrective actions and improvements to ensure that the technical, programmatic and management issues are resolved before the plant is allowed to restart. These processes are sufficient to assure the public health and safety. Contrary to the conclusions in the Petition, it is not necessary to revoke the license for Davis-Besse and to re-license the plant in order to ensure that the plant will operate safely.

CONCLUSION

The Petitioner has not provided an adequate basis for the unprecedented step of revoking the license for Davis-Besse. As demonstrated above, the Petitioner has simply re-asserted issues already inspected and investigated, or currently under investigation, by the NRC, and made baseless allegations of wrongdoing. The Petition fails to raise any new issues or to provide any significant new information. Nothing in the Petition warrants a change of course or position by the NRC.

In any event, there are no grounds for license revocation. FENOC has repeatedly and consistently demonstrated its willingness and ability to comply with NRC requirements. FENOC self-reported the Davis-Besse RPV head degradation and the related events cited by Petitioner. FENOC promptly launched internal investigations into these events and their root causes. FENOC has taken aggressive and comprehensive measures to remediate the RPV head degradation, to correct the identified root causes, and to prevent any future occurrences. And, FENOC is cooperating with the NRC's several investigations related to the Davis-Besse RPV head degradation.

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Finally, the Petition does not give appropriate credit to the extensive oversight processes already established by the NRC. As discussed above, restart of Davis-Besse is subject to both a CAL requiring NRC's prior written approval before restart, and a 0350 Panel subjecting restart to enhanced NRC oversight and monitoring.

All of the above-described efforts operate collectively to ensure regulatory compliance and the continued safe operation of the plant after restart, making license revocation wholly unnecessary and unwarranted. In short, the Petition provides no grounds for revocation of Davis-Besse's license. Accordingly, the Petition should be denied in its entirety.

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COMMITMENT LIST

THE FOLLOWING LIST IDENTIFIES THOSE ACTIONS COMMITTED TO BY THE DAVIS-BESSE NUCLEAR POWER STATION (DBNPS) IN THIS DOCUMENT. ANY OTHER ACTIONS DISCUSSED IN THE SUBMITTAL REPRESENT INTENDED OR PLANNED ACTIONS BY THE DBNPS. THEY ARE DESCRIBED ONLY FOR INFORMATION AND ARE NOT REGULATORY COMMITMENTS. PLEASE NOTIFY THE MANAGER – REGULATORY AFFAIRS (419-321-8450) AT THE DBNPS OF ANY QUESTIONS REGARDING THIS DOCUMENT OR ANY ASSOCIATED REGULATORY COMMITMENTS.

COMMITMENTS

DUE DATE

None

None