

October 21, 2004

Ms. Sandy Buchanan
Executive Director
Ohio Citizen Action
614 W. Superior Avenue, Suite 1200
Cleveland, OH 44113

Dear Ms. Buchanan:

On behalf of the Nuclear Regulatory Commission, I am responding to your letter dated August 13, 2004, which discussed the performance of FirstEnergy Nuclear Operating Company's (FENOC's) Davis-Besse and Perry nuclear power plants and asked under what circumstances the U. S. Nuclear Regulatory Commission (NRC) would consider revoking FENOC's operating licenses for these plants. Your letter voiced Ohio Citizen Action's (OCA's) concerns that the problems at Davis-Besse may have strained FENOC's financial and labor resources; that Davis-Besse had a recent scram (automatic shutdown) due to a blown fuse; that Perry had recently been placed in the Multiple/Repetitive Degraded Cornerstone (Column 4) of the NRC Manual Chapter 0305 Action Matrix; and that FENOC had undergone a personnel reorganization. The OCA also asked whether FENOC would have to cause an actual nuclear disaster before the NRC would take preventive action.

The NRC's primary mission is to protect the health and safety of the public and ensure that each U. S. commercial nuclear power plant operates safely. This is our most important responsibility, and we take this mandate very seriously.

On March 8, 2004, the NRC authorized the restart of Davis-Besse following extensive inspections and reviews of the equipment repairs and modifications and performance improvement activities. The plant had been shut down over 2 years after substantial corrosion damage of the reactor vessel head was discovered during NRC-required inspections. As part of the restart authorization, the NRC issued a Confirmatory Order to FENOC requiring independent assessments and inspections at Davis-Besse to ensure that the utility's corrective actions are lasting and effective. Annual independent assessments of operations, safety culture, corrective actions and engineering are to be conducted by the utility over the next 5 years, and the results will be made public.

NRC scrutiny of Davis-Besse remains intensive. A special NRC oversight panel continues to assess Davis-Besse's performance and manage the NRC's regulatory activities for the plant. This panel, which was set up in April 2002, will continue to hold periodic public meetings near the plant to discuss the licensee's performance. The panel will continue its activities until the NRC determines that Davis-Besse can be returned to the normal reactor oversight process.

Regarding FENOC's financial pressures, as stated in our letter to you dated March 9, 2004, the NRC has not found FENOC unable to meet its financial qualifications and obligations required by its operating license. FirstEnergy has provided the necessary financial support for the restart of Davis-Besse. In addition, the staff's review of the biannual update of the decommissioning trust fund required by 10 CFR 50.75(f)(1), submitted in March 2003, has not revealed any problems with their contributions to the decommissioning trust fund.

On August 4, 2004, Davis-Besse automatically shut down from full power and operators stabilized the plant in Mode 3 (Hot Standby). Automatic shutdowns are intended to safely shut down a plant in response to a potentially unsafe condition. In this instance, no unsafe condition existed and the shutdown was the result of testing. During and following the automatic shutdown, safety systems functioned as designed, the plant staff responded appropriately, and there were no safety concerns associated with the shutdown. At the time of the shutdown, workers had just started performing reactor protection system testing of a reactor trip breaker. The cause of the shutdown was the combined effect of performing the testing on one reactor trip breaker with an unidentified blown fuse in the control rod drive source interruption device for the redundant reactor trip breaker. The licensee replaced the blown fuse and repeated the test successfully. Plant procedures were changed to ensure that for similar testing in the future, the non-test channel fuses will be verified prior to taking the test channel out-of-service. The NRC resident inspectors were on site at the time of the reactor shutdown and monitored the licensee's response to the event and follow-up actions.

As you point out, we recently placed the Perry plant in Column 4 of the NRC Manual Chapter 0305 Action Matrix because of three equipment problems and the utility's response to those problems. The NRC has been aware of the declining performance at Perry over the past year and we have increased our inspection activities accordingly, following the guidance of our reactor oversight process. The NRC evaluated each equipment problem at Perry and determined that each was a White finding, meaning that it has low to moderate safety significance in the NRC's scale of safety significance ranging from Green through White and Yellow, to Red. A White finding leads to additional NRC inspections, and we have completed those inspections for each White finding at Perry. By procedure, a White finding normally remains open for a minimum of four calendar quarters; however, a White finding can be held open for more than four quarters if the licensee's corrective actions are insufficient. An increase in NRC response is required for having at least two White findings open in five or more consecutive calendar quarters within a safety cornerstone. This is the case for Perry, due primarily to inadequate corrective actions for certain of the findings, which resulted in Perry being placed in Column 4 of the Action Matrix. The Column 4 designation will lead to implementation of a Perry performance improvement program by the utility, a special, broad-based, large team inspection by the NRC, and a top level public meeting to discuss Perry's performance. The performance at Beaver Valley is such that all performance indicators and all findings are Green and no increased inspections are deemed necessary. After discussions with FENOC, the NRC also plans to conduct a top level public meeting with FENOC to discuss the integrated performance of Davis-Besse, Perry, and Beaver Valley.

FirstEnergy Nuclear Operating Company completed a three-phase reorganization of the company on August 23, 2004. The reorganization began in June with the appointment of senior executives, followed by the selection of directors, managers, supervisors and superintendents. The final phase included selection of corporate and plant staff members. The NRC has verified that this reorganization did not violate any of the NRC's minimum staffing requirements. We will continue to monitor the performance at Davis Besse, Perry, and Beaver Valley to ensure that, with the reorganization, FENOC demonstrates and maintains sufficient resources, management, and staff to safely operate these three facilities.

In conclusion, the NRC's response to the performance of Davis-Besse and Perry follows specific, objective, and measured procedures. This process provides a means to collect information about licensee performance, assess the information for its safety significance, and provide for appropriate licensee and NRC response. Continued plant operation is based, in part, on the NRC assessment that a licensee is capable of correcting its problems and operating the plant safely. In order to initiate proceedings to revoke a plant's operating license, the NRC would have to establish that a licensee is unable or unwilling to comply with NRC requirements. This is not the case for FENOC. A detailed description of the Reactor Oversight Process can be found at <http://www.nrc.gov/reactors/operating/oversight/rop-description.html>. As discussed above, the NRC is taking extensive preventive action to ensure that performance improves at both Davis-Besse and Perry. In our view, Davis-Besse, Perry, and Beaver Valley are currently operating safely, but Davis Besse and Perry require heightened NRC oversight as they respond to problems they have experienced.

I trust that this information is responsive to your concerns. Should you have any further questions, please do not hesitate to contact me, Christine Lipa (for Davis Besse), or Mark Ring (for Perry), of my staff. We can all be contacted via the Region III switchboard 630/829-9500 or 800/522-3025. Should you also have questions regarding the Beaver Valley plant in Pennsylvania, please contact Mr. Peter Eselgroth from our Region I office at 610/337-5000 or 800/432-1156.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Docket Nos. 50-346; 50-440
License Nos. NPF-3; NPF-58

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*see previous concurrence

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