

For the Nuclear Regulatory Commission.
Ledyard B. Marsh,
*Director, Division of Licensing Project
Management, Office of Nuclear Reactor
Regulation.*
[FR Doc. 03-23251 Filed 9-17-03; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346; License No. NPF-03]

FirstEnergy Nuclear Operating Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a letter dated February 3, 2003, filed by Congressman Dennis Kucinich, Representative for the 10th Congressional District of the State of Ohio in the United States House of Representatives, hereinafter referred to as the "petitioner." The petition was supplemented on March 27, 2003. The petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), located in Ottawa County, Ohio.

The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) immediately revoke the FirstEnergy Nuclear Operating Company's (FENOC's or the licensee's) license to operate the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), located in Ottawa County, Ohio. As an alternative, the Petitioner asked the NRC to reexamine its denial of a previous 2.206 petition, submitted by the Toledo Coalition for Safe Energy *et al.*, that requested the NRC issue an order to the licensee requiring a verification by an independent party for issues related to the reactor vessel head damage at Davis-Besse.

The basis for the request was that FENOC "has operated outside the parameters of their operating license for several years, has violated numerous federal laws, rules and regulations, and has hidden information from the NRC and lied to the NRC to justify the continuing operation of the Davis-Besse Nuclear Power Station." The Petitioner supported his request by citing various publicly available documents and information related to reactor pressure vessel head damage discovered at Davis-Besse in March 2002. The documents describe noncompliance with the Davis-Besse operating license and violations of NRC regulations. The documents include NRC inspection reports, newspaper articles, and reports

published by the Union of Concerned scientists.

By an acknowledgment letter dated February 10, 2003, the NRC staff formally notified the Petitioner that the letter dated February 3, 2003, met the criteria for review under 10 CFR 2.206, and that the NRC staff would act on the request within a reasonable time. The acknowledgment letter further stated that the Davis-Besse facility was shut down, and would remain so, until the NRC is satisfied that there is reasonable assurance of adequate protection of the public health and safety and that issues associated with management of the facility and potential wrongdoing have been satisfactorily addressed. The NRC staff also informed the Petitioner in the acknowledgment letter that the issues raised in the petition were being referred to NRR for appropriate action.

On March 27, 2003, the Petitioner submitted supplemental information to support the petition. The licensee responded to the Petition on February 27, 2003, and to the supplement on April 11, 2003. These responses were considered by the staff in its evaluation of the petition. Copies of the licensee's responses are publicly available in the NRC's NRC's Agencywide Documents Access and Management System (ADAMS).

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to licensee for comment on June 6, 2003. The Petitioner and FENOC both responded with comments on July 7, 2003. The comments and the NRC staff's response to them are included with the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to revoke the Davis-Besse operating license and the alternative request for the NRC to reexamine its denial of a previous 2.206 petition, submitted by the Toledo Coalition for Safe Energy *et al.*, that requested the NRC issue an order to the licensee requiring a verification by an independent party for issues related to the reactor vessel head damage at Davis-Besse, both be denied. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 DD-03-03, the complete text of which is available in ADAMS, or are available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible from the ADAMS Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who

encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

The NRC staff has carefully considered the Petitioner's arguments regarding why FENOC's operating license for the Davis-Besse Nuclear Power Station should be revoked, as well as the alternative request for verification by independent party. The NRC staff shares the Petitioner's concerns about verifying the adequacy of plant operator performance and ensuring that future operation of the plant is conducted safely and in compliance with NRC requirements. The licensee has established, and is implementing, a Return-to-Service Plan that comprehensively addresses human factors, programmatic, and equipment issues along with the specific corrosion of the reactor vessel head. This includes evaluating, testing, or inspecting plant safety-related systems to ensure that they are able to perform their design-basis functions as defined in the plant's technical specifications and Updated Final Safety Analysis Report. Additionally, the NRC's has implemented enhanced oversight of the Davis-Besse facility that included the creation of an oversight panel to provide the required oversight during the plant shutdown, any future restart, and following restart until a determination is made that the plant is ready for return to the NRC's normal Reactor Oversight Process. The NRC's inspection activities go beyond ensuring that the direct causes of the damage to the reactor vessel head are properly identified and corrected. The NRC's activities also look broadly at safety-related plant systems and programs to ensure that the physical condition of the plant is adequate and the licensee's operations, maintenance, and engineering organizations are prepared to operate the plant safely if it is permitted to restart. Thus the NRC believes that the FENOC Return-to-Service Plan, as monitored by the NRC Davis-Besse Oversight Panel, provides an appropriate opportunity for FENOC to demonstrate or achieve compliance with NRC requirements, and that these activities will provide results that adequately address the Petitioner's stated safety concerns.

With regard to the specific punitive action of revoking the Davis-Besse operating license sought by the Petitioner, the NRC staff finds that there is insufficient basis to take the requested action. While serious violations did occur at the Davis-Besse facility, the violations in and of themselves do not