

importance of maintaining a SCWE and of assisting managers and supervisors in responding to employees who raise safety concerns in the workplace. AVI also agreed to include in such training the requirements of 10 CFR 50.7, "Employee protection."

On July 6, 2005, AVI consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. AVI further agreed in its July 6, 2005, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing.

The NRC has concluded that its concerns can be resolved through effective implementation of AVI's commitments. I find that AVI's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that AVI's commitments be confirmed by this Order. Accordingly, the staff is exercising its enforcement discretion and will not issue a Notice of Violation in this case. Based on the above and AVI's consent, this Order is immediately effective upon issuance. AVI is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

#### IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It is hereby ordered, effective immediately, that:*

By no later than six months from the issuance of this Order, AVI will include in its policy/programs, information necessary to ensure that its future activities with NRC licensees will incorporate training, initial and recurring, for its employees involved with the NRC licensees regarding SCWE and safety culture. AVI also agreed to include in such training the requirements of 10 CFR 50.7, "Employee protection."

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by AVI of good cause.

#### V

Any person adversely affected by this Confirmatory Order, other than AVI, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing.

A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government Offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

A request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 15th day of July, 2005.

**Michael R. Johnson,**

*Director, Office of Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-346, License No. NPF-3, EA-04-224]

### In the Matter of FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, 5501 North State Route 2, Oak Harbor, OH 43449-9760; Confirmatory Order Modifying License (Effective Immediately)

#### I

FirstEnergy Nuclear Operating Company (FENOC or Licensee) is the holder of Facility Operating License No. NPF-3 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on April 22, 1977. The license authorizes the operation of Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), in accordance with conditions specified therein. The facility is located on the Licensee's site in Ottawa County, Ohio.

#### II

On February 9, 2004, and July 8, 2004, the NRC's Office of Investigations (OI) began investigations to determine if former AVI Food Systems, Inc. (AVI) employees at Davis-Besse were the subject of employment discrimination in violation of 10 CFR 50.7. In OI Report Nos. 3-2004-006 and 3-2004-018, OI concluded that AVI employees were the subject of discrimination. By letter dated February 25, 2005, the NRC identified to the Licensee the NRC's concern and offered FENOC the opportunity to attend a predecisional enforcement conference or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and FENOC and, if possible, assist the NRC and FENOC in reaching an agreement on resolving the concern. FENOC chose to participate in ADR. On May 11, 2005, the NRC and FENOC met at the Davis-Besse facility in Oak Harbor, Ohio in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. As part of the ADR session, based upon the facts discussed during the mediation session and the commitments noted in Section IV below, the NRC will not issue a notice of violation for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.

### III

By letter dated June 15, 2005, the Licensee stated that in addition to the actions already taken by FENOC to promote a safety conscious work environment (SCWE) at the FENOC nuclear facilities, the Licensee agreed to take certain additional corrective measures to emphasize the importance of a SCWE. The agreed-upon additional actions noted in Section IV of this Confirmatory Order focus on SCWE training for contractor personnel who are granted unescorted access to Davis-Besse and the other FENOC nuclear facilities.

On July 6, 2005, FENOC consented to the NRC issuing this Confirmatory Order with the commitments, as described in Section IV below. The Licensee further agreed in its July 6, 2005, letter that this Order is to be effective upon issuance and that it has waived its right to a hearing. The NRC has concluded that its concerns can be resolved through NRC's confirmation of the Licensee's commitments as outlined in this Order.

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance. FENOC is required to provide the NRC with a letter summarizing its actions when all of the Section IV requirements have been completed.

### IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *It is hereby ordered, effective immediately, that License No. NPF-3 is modified as follows:*

1. By no later than August 31, 2005, FENOC will provide contractors who are granted unescorted access to FENOC nuclear facilities with SCWE training that is equivalent to the SCWE training provided to FENOC employees as part of Plant Access Training.

2. By no later than August 31, 2005, FENOC will review the SCWE training module included in Plant Access Training and make any changes necessary to ensure that the module clearly reinforces that FENOC SCWE policies and NRC employee protection

requirements (10 CFR 50.7) apply to all personnel working on behalf of FENOC, specifically including contractor employees, supervision, and management.

3. By no later than August 31, 2005, FENOC will provide specific training to the Davis-Besse food services contractor management and supervision involved in the provision of services to FENOC on SCWE principles, FENOC SCWE policies, and NRC employee protection requirements (10 CFR 50.7). This training will be comparable to the SCWE training that has been provided to FENOC management and supervision.

4. By no later than August 31, 2005, FENOC will include surveys of contractor personnel as part of the quarterly FENOC performance monitoring of SCWE at its nuclear facilities. These surveys are performed annually. Other data relied upon in the quarterly performance monitoring already includes the activities of contractor personnel in the calculation of the applicable performance measures.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

### V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, and to the Licensee. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to (301)

415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

A request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 15th day of July, 2005.

**Michael R. Johnson,**

*Director, Office of Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-22-ISFSI]

### In the Matter of Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation); Notice of Appointment of Adjudicatory Employees

*Commissioners:* Nils J. Diaz, Chairman;  
Jeffrey S. Merrifield; Gregory B. Jaczko;  
Peter B. Lyons.

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Arthur Buslik of the Office of Nuclear Regulatory Research, Division of Risk Analysis and Applications, Probabilistic Risk Analysis Branch; and Abdul Sheikh, of the Office of Nuclear Regulatory Research, Division of Engineering Technology, Engineering Research Applications Branch, have been appointed as Commission adjudicatory employees within the meaning of section 2.4, to advise the Commission regarding issues relating to the pending petition for review in the Matter of Private Fuel Storage, L.L.C. (Contention Utah K (Aircraft Crashes)). These employees have not previously performed any investigative or litigating function in connection with this or any related proceeding. Mr. Buslik has previously served as an adjudicatory employee in this proceeding.

Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or