



# Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

June 25, 2003

Mr. James E. Dyer, Regional Administrator  
United States Nuclear Regulatory Commission  
801 Warrenville Road  
Lisle, IL 60532-4351

**SUBJECT: NRC OFFICE OF INVESTIGATIONS INPUT TO DAVIS-BESSE  
RESTART DECISION**

Dear Mr. Dyer:

The Union of Concerned Scientists (UCS) retained attorney Ms. Diane Curran late last year to review publicly available documents on the Davis-Besse reactor vessel head degradation event and outline the applicable statutes and the instances where information provided by FirstEnergy employees may have violated these statutes. Ms. Curran and I co-authored the enclosed legal memo that concluded:

*“FirstEnergy falsely represented the condition of the pressure vessel and associated piping in order to avoid an NRC-ordered shutdown, and knowingly and recklessly exposed the people of Ohio to a grave and preventable safety risk. These misdeeds require a forceful response that imposes criminal penalties on both the FirstEnergy corporation and its individual managers.”*

Mr. Howard Ris, the UCS President, transmitted this legal memo to Mr. Gregory White, the US Attorney in Northern Ohio, seeking an independent investigation. Based on my discussions with Mr. Bill Edwards on Mr. White’s staff, the matter was referred back to NRC for investigation. And as you know, this NRC investigation has entered its second year with no discernible end in sight.

We are not alone in thinking that the individuals responsible for the vessel head degradation and the associated misrepresentation of plant conditions to the NRC have thus far eluded accountability. A recent survey of workers at Davis-Besse reported:

*“...many personnel interviewed perceive that Senior Management has not acknowledged their accountability and responsibility for the reactor head event. These personnel expressed disappointment and frustration that this had not taken place. Staff point out that some of the managers directly involved in the event remain in the organization and have been reassigned to other sites and positions. The reassignments are perceived as indicating that the managers have not been held accountable by the organization.”*

This quote comes from the Safety Culture Evaluation report prepared by a consultant to FirstEnergy and transmitted by Mr. Lew Myers’ letter dated April 23, 2003, to you. NRC staffers share the concerns. For example, during his transcribed interview by the NRC’s Office of the Inspector General on September 3, 2002, NRC senior manager John Zwolinski stated:

*“I mean, Davis-Besse is announcing we’re getting ready to start our plant in December, and this and that. How can this agency have faith, trust, and confidence we’ve got the right anything from that facility? I mean, this kind of thing shakes me one hundred percent. I mean, you simply can’t work that way with a regulator.”*

If many employees at Davis-Besse who were there through thick and thin (both figuratively and literally) do not believe there has been accountability and at least one NRC senior manager believes Davis-Besse management is untrustworthy, why should you or we or any one believe Davis-Besse is staffed and managed by people committed to doing the right thing?

It is our understanding that you have the final decision in authorizing the restart of the Davis-Besse nuclear plant. If and when convinced that all items on the Confirmatory Action Letter, as amended, and the Restart Action List have been satisfactorily addressed, Mr. John A. Grobe and his 0350 Panel will forward to you a recommendation that the plant is ready for restart.

But the 0350 Panel process intentionally omitted an extremely vital and relevant area – accountability for false and misleading information provided to the NRC by FirstEnergy employees in response to Bulletin 2001-01. The NRC’s Office of Investigations (OI), not the 0350 Panel, is determining whether people at Davis-Besse should be held accountable. Ms. Curran and I met with Mr. Guy Caputo on April 10, 2003, regarding the ongoing OI efforts related to Davis-Besse. That the OI effort is decoupled from the 0350 Panel work and the restart decision was clearly conveyed to us when Mr. Caputo asked me the projected restart schedule. If OI’s results were integral to your restart decision, Mr. Caputo, or one of his assistants attending our meeting, would surely have known the restart date.

You will not have sufficient information to determine that Davis-Besse is ready for restart until you have heard from both the 0350 Panel and the Office of Investigations. Mr. Grobe and his panel can tell you that they believe the plant’s material condition and its processes have been properly restored. But they cannot tell you that the people responsible for providing false and misleading information to the NRC about the plant’s material condition and its processes have been held accountable.<sup>1</sup> Only Mr. Caputo and his investigators can tell you if that is true. Absent that final report from Mr. Caputo, you lack sufficient assurance that Davis-Besse after restart will be operated in accordance with applicable regulations and requirements.

It would also seem apparent that OI’s efforts must be completed prior to restart in order to resolve some of the safety culture problems at Davis-Besse. The NRC is allegedly concerned about the plant’s safety culture, as evidenced by the fact the agency sent a 7-member team to the site in May 2003 for the sole purpose of evaluating safety culture. According to FirstEnergy’s own consultant, many workers at the site are disappointed and frustrated that responsible managers haven’t been held accountable. FirstEnergy made numerous staffing changes at Davis-Besse last year. The aforementioned consultant’s report this year clearly indicates that many workers were neither impressed nor satisfied by those changes. OI’s final report would go a long way towards alleviating their disenchantment. That OI’s investigation is “ongoing” satisfies no one, since it is the bureaucratic equivalent of the lame “check’s in the mail” excuse.

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<sup>1</sup> Even if Mr. Grobe’s panel could assure you that all people who assembled and transmitted the false and misleading information to the NRC are no longer working at Davis-Besse, they cannot assure you – absent completion of the OI effort – that these people won’t get transferred back to Davis-Besse after the plant is restarted.

Likewise, the synopsis of OI's final report, which is usually made publicly available, would go a long way towards restoring public confidence in the NRC and FirstEnergy. The 0350 Panel process has been extremely visible with evening public meetings, extensive coverage on the NRC's website, and readily available meeting transcripts. The OI efforts, on the other hand, have been virtually invisible. For the very same reasons that the NRC went the extra mile to make the 0350 Panel process open and accessible, the agency needs to do the same – to the extent possible – with the OI investigation results. As a minimum, the synopsis for the final report should be released publicly prior to restart.

If you allowed Davis-Besse to restart without OI having finished its investigations, you would be doing so upon FirstEnergy's unverified assurances that it had "cleaned house" of all responsible persons. And isn't that almost exactly how the NRC got into this mess in the first place?

Sincerely,

<ORIGINAL SIGNED BY>

David Lochbaum  
Nuclear Safety Engineer  
Washington Office

Enclosure: UCS memo dated April 15, 2003, "Legal and Factual Basis for Criminal Sanctions Against FirstEnergy Nuclear Operating Company For Material Misrepresentations to the U.S. Nuclear Regulatory Commission and Violations of NRC Regulations Regarding the Davis-Besse Nuclear Power Plant." (w/o exhibits)

cc: Chairman Nils J. Diaz  
Commissioner Edward McGaffigan, Jr.  
Commissioner Jeffrey S. Merrifield  
Mr. Guy Caputo, Director – Office of Investigations  
Mr. Hubert Bell, Inspector General