

and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Miller is permitted to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Miller be prohibited from any involvement in NRC-licensed activities for a period of five years effective immediately. Additionally, Mr. Miller is required to notify the NRC of his first employment in NRC-licensed activities for a period of five years following the prohibition period.

## V

Accordingly, pursuant to sections 103, 104, 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, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered* that effective immediately:

1. Mr. Dale Miller is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. The NRC considers NRC-licensed activities to be those activities that are conducted pursuant to a specific or general license issued by the NRC, including those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Miller is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of five years after the five-year period of prohibition has expired, Mr. Miller shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the notification, Mr. Miller shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of

the above conditions upon demonstration by Mr. Miller of good cause.

## VI

In accordance with 10 CFR 2.202, Dale Miller must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order, consideration may be given to extending the response time for submitting an answer as well as the time for requesting a hearing, for good cause shown. 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. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Miller or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or 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, Lisle, IL 60532-4352, and to Mr. Miller if the answer or hearing request is by a person other than Mr. Miller. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and 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 other than the Mr. Miller 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.

If a hearing is requested by Mr. Miller or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Miller, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective immediately and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated this 4th day of January 2006.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Deputy Executive Director for Materials, Research, State, and Compliance Programs, Office of the Executive Director for Operations.*

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## NUCLEAR REGULATORY COMMISSION

[IA-05-054]

### Steven Moffitt; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

## I

Mr. Steven Moffitt was previously employed, at times relevant to this Order, as the Technical Services Director at the Davis-Besse Nuclear Power Station (Davis-Besse) operated by FirstEnergy Nuclear Operating Company (FENOC or licensee). The licensee holds License No. NPF-3 which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 22, 1977. The license authorizes the operation of Davis-Besse in accordance with the conditions specified therein. The facility is located on the Licensee's site near Oak Harbor, Ohio.

## II

On August 3, 2001, the NRC issued Bulletin 2001-001, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles," (Bulletin).

In the Bulletin, the NRC requested that all holders of operating licenses for pressurized water nuclear power reactors (PWR), including FENOC for the Davis-Besse facility, provide information to the NRC relating to the structural integrity of the reactor pressure vessel (RPV) head penetration nozzles at their respective facilities. The information requested from the licensees included the extent of RPV head penetration nozzle leakage and cracking that had been found to date, a description of the inspections and repairs undertaken to satisfy applicable regulatory requirements, and the basis for concluding that a licensee's plans for future inspections would ensure compliance with applicable regulatory requirements. The NRC also required that all the Bulletin addressees, including FENOC, submit a written response to the NRC in accordance with the provisions of 10 CFR 50.54(f). That regulation provides, in part, that upon request of the NRC, an NRC-licensee must submit written statements, signed under oath or affirmation, to enable the NRC to determine whether the license should be modified, suspended, or revoked.

On September 4, October 17, and October 30, 2001, the licensee provided written responses to the Bulletin. Additionally, the licensee met with the NRC staff on numerous occasions during October and November of 2001 to provide clarifying information. Based, in part, on the information provided by FENOC in its written responses to the Bulletin and during meetings with the NRC staff, the NRC staff allowed the licensee to continue operation of the Davis-Besse facility until February 2002, rather than requiring FENOC to shut the unit down to perform inspections by December 31, 2001, as provided in the Bulletin.

On February 16, 2002, FENOC shut down Davis-Besse for refueling and inspection of control rod drive mechanism (CRDM) RPV head penetration nozzles. Using ultrasonic testing, the licensee found cracks in three CRDM RPV head penetration nozzles and on March 6, 2002, the licensee discovered a cavity in the RPV head in the vicinity of CRDM Penetration Nozzle No. 3. The cavity measured approximately 5 to 7 inches long, 4 to 5 inches wide, and penetrated through the 6.63 inch-thick low-alloy steel portion of the RPV head, leaving the stainless steel cladding material (measuring 0.202 to 0.314 inches-thick) as the sole reactor coolant system (RCS) pressure boundary. A smaller cavity was also found near CRDM Penetration Nozzle No. 2.

The licensee conducted a root cause evaluation and determined that, contrary to the earlier information provided to the NRC, the cavities were caused by boric acid from the RCS released through cracks in the CRDM RPV head penetration nozzles. The root cause evaluation found that the licensee had previously conducted limited cleaning and inspections of the RPV head during the Twelfth Refueling Outage (12RFO) that ended on May 18, 2000. However, neither the limited RPV head cleaning nor the resultant inspections during 12RFO were sufficient to ensure that the significant boric acid deposits on the RPV head were only a result of CRDM flange leakage and were not a result of RCS pressure boundary leakage.

On March 6 and March 10, 2002, the licensee provided information to the NRC concerning the identification of a large cavity in the RPV head adjacent to CRDM Penetration Nozzle No. 3. The NRC conducted an Augmented Inspection Team (AIT) inspection at Davis-Besse from March 12 to April 5, 2002, to determine the facts and circumstances related to the significant degradation of the RPV head. The results of the AIT inspection were documented in NRC Inspection Report No. 50-346/2002-03, issued on May 3, 2002. A follow-up Special Inspection was conducted from May 15 to August 9, 2002, and on October 2, 2002, the NRC issued the AIT Follow-up Special Inspection Report No. 50-346/2002-08 documenting ten apparent violations associated with the RPV head degradation.

On April 22, 2002, the NRC Office of Investigations (OI) initiated an investigation at Davis-Besse to determine, among other matters, whether FENOC and individual employees at the Davis-Besse facility failed to provide complete and accurate information to the NRC in its September 4, October 17, and October 30, 2001, responses to the Bulletin and during numerous conference calls and meetings in violation of 10 CFR 50.9 and 10 CFR 50.5(a)(2). The OI report (No. 3-2002-006) was issued on August 22, 2003. A copy of the OI report was provided to the U. S. Department of Justice (DOJ), Office of the United States Attorney, Northern District of Ohio for review. The matter remains under continued Federal investigation.

Mr. Moffitt was aware of the scope of the previous reactor vessel head inspections and the condition of the reactor vessel head due to his official duties and written and oral communications he received from other FENOC employees. For example;

- During a sworn, transcribed interview with OI, Mr. Moffitt stated that it was common knowledge that the reactor head was not totally cleaned during 12RFO.

- On June 27, 2001, Mr. Moffitt was sent a memorandum that provided an engineering evaluation of the question, "Should Davis-Besse Perform a Visual Head Inspection if The Plant Shut Down to Mode 5 Conditions?" Page 2 of the memorandum stated:

"During 12th RFO at Davis-Besse (DB) the Reactor Vessel head inspection was performed in accordance with boron inspection walkdown as required by GL-88-05 and GL 97-01. Large boron leakage from a CRDM flange was observed. This leakage did not permit the detailed inspection of CRDM nozzles."

- On August 11, 2001, FENOC held a meeting to discuss its pending response to the Bulletin. Mr. Moffitt was listed as an attendee at the meeting, as documented in an E-mail from a design engineer that same day. As stated in the E-mail, "it was pointed out that we can not clean our head thru the mouse holes and a system engineer is requesting that three large holes be cut in the Service Structure for viewing [inspection] and cleaning."

- During a sworn, transcribed interview with OI, Mr. Moffitt stated that around the August 11, 2001, time frame he remembered talking to the engineer who had cleaned the RPV head regarding how much of the head was cleaned. Mr. Moffitt further stated that the engineer told him about 80 percent of the head was cleaned.

- During September 2001, Mr. Moffitt hired a contractor employed by Piedmont Management and Technical Services, Inc. to review Davis-Besse's preparation for 13RFO with implementing the requirements of Bulletin 2001-001. On September 14, 2001, the contractor provided Mr. Moffitt a copy of the letter [report] containing his recommendations and approximately one week later verbally briefed Mr. Moffitt on the contents of the report. The report stated, in part: "It is noted that on completion of 12RFO, the Reactor Vessel head did have boric acid crystal deposits of considerable depth left in the center top area of the head, since cleaning of this area at that time was not successful in removing all the deposits (partly due to limited access)."

- During a licensee interview of Mr. Moffitt on July 1, 2002, Mr. Moffitt indicated that he knew in the July to August 2001 time-frame that boric acid was left on the head in 12RFO and that the boric acid impeded a complete inspection of the head.

The above information demonstrates that Mr. Moffitt had sufficient knowledge of the results of previous inspections of the RPV head and that he knew the licensee's written and oral responses to NRC Bulletin 2001-001 were incomplete and inaccurate.

Several FENOC employees, including Mr. Steven Moffitt, were responsible for the information provided to the NRC by FENOC in response to the Bulletin.

### III

Steven Moffitt was employed by FENOC as the Technical Services Director at Davis-Besse at the time the responses to the Bulletin were developed and transmitted to the NRC. Mr. Moffitt participated in an October 3, 2001, teleconference with the NRC staff and a presentation on October 11, 2001, to the NRC Commissioners' Technical Assistants. On October 17, 2001, Mr. Moffitt concurred in the issuance of the supplemental licensee response, dated October 17, 2001.

On October 3, 2001, Mr. Moffitt was a senior Davis-Besse management official on a conference call with the NRC staff. Mr. Moffitt was also involved in preparatory meetings for the October 3rd conference call. The agenda for the conference call stated: "Video Inspection Review from RFO10, RFO11, and RFO12: Further Confirmation of no indication of leakage attributable to CRDM Nozzle leakage; clearly CRDM flange leakage." During the conference call, Mr. Moffitt's direct subordinate informed the NRC that 100% of the RPV head had been inspected during the last outage (12RFO) but that some areas were precluded from inspection and that videotapes of the inspections conducted during 10RFO, 11RFO, and 12RFO had been reviewed. Mr. Moffitt was aware at the time of the October 3, 2001, meeting that the licensee did not conduct a 100% inspection of the RPV head during 12RFO due to the presence of boric acid on the head which obscured a significant number of the RPV head nozzles yet approved the misleading statements thereby causing the incomplete and inaccurate information to be submitted to the NRC.

On October 10, 2001, Mr. Moffitt participated in a meeting with other FENOC officials for the purpose of finalizing presentation slides to be used during an October 11, 2001, meeting with the NRC Commissioner's Technical Assistants. Draft Presentation Slide 20 stated: "Reviewed video inspections of Reactor Vessel head taken during 11RFO (April 1998) and 12RFO (April 2000) and confirmed that Davis-Besse has not experienced boron leakage as seen at Oconee or Arkansas Nuclear."

Presentation Draft Slide 21 for the briefing stated: "Reviewed past 3 outages of Reactor Vessel Head inspection video tapes which were taken to satisfy Generic Letter 97-01: No telltale "popcorn" type boron deposits; During 12RFO (Spring 2000), Davis-Besse identified sources of boron that precluded the visual inspection of some CRDM penetrations, as five leaking flanges above the mirror insulation; Viewed past 3 outages of inspection video tapes of area masked by boron in 12 RFO did not have previous leakage."

On October 11, 2001, Mr. Moffitt and other licensee staff briefed the NRC Commissioners' Technical Assistants on FENOC's basis for concluding that Davis-Besse was safe to operate until the next refueling outage (March 2002). During the briefing, FENOC utilized the presentation slides that were finalized the previous day. Presentation Slide 6 stated, in part: "Conducted and recorded video inspections of the head during 11RFO (April 1998) and 12RFO (April 2000)—No head penetration leakage was identified." Presentation Slide 7 stated, in part: "All CRDM [control rod drive mechanism] penetrations were verified to be free from "popcorn" type boron deposits using video recordings from 11RFO or 12RFO."

The licensee's October 11, 2001, presentation to the NRC Commissioners' Technical Assistants was materially incomplete and inaccurate in that the presentation slides did not state that the build-up of boric acid on the RPV head was so significant that the licensee could not inspect all of the RPV head penetration nozzles. Due to the significant amount of boric acid present on the RPV head, of which Mr. Moffitt was aware, the licensee also did not have a basis for stating that no visible evidence of RPV penetration nozzle leakage was detected. Mr. Moffitt knew the information was incomplete and inaccurate and allowed it to be submitted to the NRC.

On October 17, 2001, the licensee provided a supplemental response to the Bulletin. The second paragraph under the section entitled, "Previous Inspection Results," on Page 2 of Attachment 1 of the licensee's October 17, 2001, supplemental response stated, in part:

"The inspections performed during the 10th, 11th, and 12th Refueling Outage (10RFO, conducted April 8 to June 2, 1996; 11RFO, conducted April 10 to May 23, 1998; and, 12RFO, conducted April 1 to May 18, 2000) consisted of a whole head visual inspection of the RPV head in accordance with the DBNPS Boric Acid Control Program pursuant to Generic Letter 88-05 "Boric Acid

Corrosion of Carbon Steel Reactor Pressure Boundary Components in PWR Plants." The visual inspections were conducted by remote camera and included below insulation inspections of the RPV bare head such that the Control Rod Drive Mechanism (CRDM) nozzle penetrations were viewed. During 10RFO, 65 of 69 nozzles were viewed, during 11RFO, 50 of 69 nozzles were viewed, and during 12RFO, 45 of 69 nozzles were viewed. It should be noted that 19 of the obscured nozzles in 12RFO were also those obscured in 11RFO."

Information included under Column 6 of Attachment 2 of the licensee's October 17, 2001, response stated, in part, that 24 nozzles have a "flange leak evident." Note 1 on the same table stated, in part:

"In 1996 during 10 RFO, the entire RPV head was inspected. Since the video was void of head orientation narration, each specific nozzle view could not be correlated."

The licensee's October 17, 2001, supplemental response was materially incomplete and inaccurate, in that the licensee did not view the stated number of RPV head penetration nozzles during the referenced outages, and the licensee believed that only five RPV head control rod drive mechanism flanges were leaking instead of the 24 RPV head control rod drive mechanism flanges noted in the response. Specifically, during 12RFO the licensee did not clean all of the RPV head; therefore, the licensee could not have viewed each of the RPV head penetration nozzles and determined that the observed boric acid accumulation was not a result of RPV nozzle leakage. Mr. Moffitt knew the information was incomplete and inaccurate but nonetheless, concurred on the response, thereby allowing the information to be submitted to the NRC.

Based on the above information, the NRC concludes that Mr. Moffitt had knowledge of the condition of the RPV head and the limitations experienced during RPV head inspections, and he deliberately failed to ensure that information that was developed for and presented during an October 3, 2001, teleconference with the NRC; was developed during an October 10, 2001, meeting and presented during an October 11, 2001, meeting with the NRC; and was included in the licensee's October 17, 2001, supplemental response to the NRC Bulletin 2001-001 was materially complete and accurate.

The information presented to the NRC and provided in the licensee's October 17, 2001, supplemental response was material to the NRC because the information gave the impression to the NRC staff that the Davis-Besse RPV head had been completely inspected for

evidence of nozzle cracks, when this was not the case at the time the information was provided or the supplemental response was submitted. In addition, information provided during the October 3 and October 11, 2001, meetings and in the licensee's October 17, 2001, supplemental response to the NRC was material to the NRC because the NRC used the information, in part, to allow FENOC to operate Davis-Besse until February 2002 rather than requiring the plant to shut down by December 31, 2001, to conduct inspections of the RPV head as discussed in Item 3.v.1 of the Bulletin.

Based on the above, Mr. Steven Moffitt, while employed by the licensee, engaged in deliberate misconduct by providing FENOC and the NRC information that he knew was not complete and accurate in all material respects to the NRC, a violation of 10 CFR 50.5(a)(2). Mr. Moffitt's actions also placed FENOC in violation of 10 CFR 50.9. The NRC determined that these violations were of very high safety and regulatory significance because they demonstrated a pattern of deliberate inaccurate or incomplete documentation of information that was required to be submitted to the NRC. Had the NRC been aware of this incomplete and inaccurate information, the NRC would likely have taken immediate regulatory action to shut down the plant and require the licensee to implement appropriate corrective actions.

#### IV

The NRC must be able to rely on the licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Moffitt's deliberate actions raise serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Moffitt is permitted to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Moffitt be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order.

Additionally, Mr. Moffitt is required to notify the NRC of his first employment in NRC-licensed activities for a period of five years following the prohibition period.

#### V

Accordingly, pursuant to sections 103, 104, 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, 10 CFR 50.5, and 10 CFR 150.20, *It is hereby ordered* that effective immediately:

1. Mr. Steven Moffitt is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. The NRC considers NRC-licensed activities to be those activities that are conducted pursuant to a specific or general license issued by the NRC, including those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Moffitt is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of five years after the five-year period of prohibition has expired, Mr. Moffitt shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the notification, Mr. Moffitt shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Moffitt of good cause.

#### VI

In accordance with 10 CFR 2.202, Steven Moffitt must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. However, since this enforcement action is being proposed prior to the U.S. Department of Justice completing its review of the OI investigation results, consideration may be given to extending the response time for submitting an answer as well as the time for requesting

a hearing, for good cause shown. 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. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Moffitt or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or 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, Lisle, IL 60532-4352, and to Mr. Moffitt if the answer or hearing request is by a person other than Mr. Moffitt. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and 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 other than Mr. Moffitt 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.

If a hearing is requested by Mr. Moffitt or 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 Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Moffitt, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective immediately and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated this 4th day of January 2006.

For the Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Deputy Executive Director for Materials, Research, State, and Compliance Programs, Office of the Executive Director for Operations.*

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-321 and 50-366]

### Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2 Exemption

#### 1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC, or the licensee), is the holder of Facility Operating License Nos. DPR-57 and NPF-5 which authorizes operation of the Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2 (Hatch 1 and 2), respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

The facility consists of two boiling water reactors located in Appling County, Georgia.

#### 2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.55a(b)(2)(ix), states the requirements for the examination of metal containments and liners of concrete containments. In particular, Section 50.55a(b)(2)(ix)(G) requires, in part, that a VT-3 examination method be used to conduct examinations of Item E.20 of Table IWE-2500-1 of Section IX of the American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code).

By letter dated March 30, 2005, as supplemented by letters dated August 2 and 24, 2005, the licensee submitted a request for an exemption from the requirements of Section

50.55a(b)(2)(ix)(G). The exemption request would allow the licensee to perform an alternative examination of the accessible surface areas of the containment vessel pressure retaining boundary vent system, in lieu of the VT-3 examination required by the rule. The licensee stated that the alternate examination method is currently in use at Hatch 1 and 2 and has proven to be sufficient to maintain the structural integrity and leak-tightness of the containment surfaces, and, therefore, serves the underlying purpose of the rule.

The licensee is currently in its 3rd 10-year inservice inspection (ISI) interval. The licensee's code of record for the 3rd 10-year ISI interval is the 1992 edition through the 1992 addenda of the ASME Code. The code of record contains the requirement to perform a VT-3 examination of the accessible surface areas of the vent system. In Relief Request RR-MC-9 submitted by letter dated July 19, 2000, the licensee requested relief from the requirement to perform a VT-3 examination on nonsubmerged, accessible pressure boundary surfaces, including the vent system, at the end of the 3rd 10-year ISI interval. The licensee explained that the proposed alternative to perform a general visual examination was sufficient to detect the types of corrosion expected in the components covered by the relief. On October 4, 2000, this request was approved by the NRC staff.

The licensee's 4th 10-year ISI interval is scheduled to begin in 2006. The licensee's code of record for this interval will be the 2001 edition through the 2003 addenda of the ASME Code. Modifications to the ASME Code and 10 CFR 50.55a since the beginning of the 3rd 10-year ISI interval have relocated the requirement to perform the subject VT-3 examination from the ASME Code to 10 CFR 50.55a(b)(2)(ix). As a result, licensees wanting relief from the requirement to perform a VT-3 examination for the subject structures must now request an exemption from the requirements of 10 CFR 50.55a(b)(2)(ix)(G).

The licensee stated in its August 24, 2005, letter that the examination provisions previously authorized through Relief Request RR-MC-9 have proven to be sufficient to maintain the structural integrity and leak-tightness of the containment surfaces, and, therefore, serve the underlying purpose of the rule. As an alternative to the VT-3 examination, SNC is proposing the examination on all nonsubmerged, accessible pressure boundary surfaces of the vent system. This general visual-

type examination will be performed in accordance with the Hatch 1 and 2 Qualified (N) Coatings Program. The licensee indicated that the details of this program were provided in the October 19, 1998, response to NRC Generic Letter 98-04, "Potential for Degradation of the Emergency Core Cooling System and the Containment Spray System after a Loss-of-Coolant Accident Because of Construction and Protective Coating Deficiencies and Foreign Material in Containment." The procedures and personnel qualifications applicable for the coatings program implementation are in compliance with Regulatory Guide 1.54 (1973), and the implementation is based on the following documents: (1) ANSI N 101.2-1972, "Protective Coatings (Plants) for Light Water Nuclear Reactor Containment Facilities;" (2) ANSI N101.4-1972, "Quality Assurance for Protective Coatings Applied to Nuclear Facilities;" and (3) EPRI Report TR-109937, "Guideline on Nuclear Safety-Related Coatings." This program was approved by the NRC staff in a letter dated November 19, 1999.

The licensee further noted that the Qualified (N) Coatings program examination frequency is equivalent to the requirements of Section XI to the ASME Code, and the program requires that when evidence of degradation is detected, a detailed examination and evaluation be performed. The detailed visual examination would be performed in accordance with the provisions of ASME Code, Section XI, paragraph IWE-2310(c). The exterior surfaces of the vent system that connects the drywell to the suppression pool are located in the reactor building. The reactor building environment does not pose adverse conditions that would promote rapid degradation of the outside pressure boundary surfaces of the vent system. The interior surfaces of the vent system that connect the drywell to the suppression pool and the portions of the vent system located inside the suppression pool are maintained in a nitrogen inerted environment during normal power operation in accordance with technical specification requirements. Operational experience and previous examinations have indicated that this environment does not promote rapid degradation of the surfaces.

The licensee stated that the requirements specified for a VT-3 examination were developed for detecting flaws in metal components and are more stringent than those required for detecting corrosion-related degradation. Since corrosion of base metal is the primary issue of concern for