April 23, 2010

EA-10-013

Mr. Barry Allen
Site Vice President
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2, Mail Stop A-DB-3080
Oak Harbor, OH 43449-9760

SUBJECT: WITHDRAWAL OF NON-CITED VIOLATION, DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1, INSPECTION REPORT 05000346/2009503

Dear Mr. Allen:

On January 27, 2010, you provided a response to an NRC Inspection Report issued on December 28, 2009, concerning activities conducted at your facility. Specifically, the letter documented that you disagreed with the Non-Cited Violation (NCV) contained in the inspection report, namely NCV 05000346/2009503-02, regarding the failure to maintain adequate emergency procedures to comply with emergency planning requirements to ensure timely notifications to State and local government agencies. By our letter dated February 22, 2010, the NRC acknowledged your letter and advised you that we were evaluating your response and would inform you of the results of our review. We have completed our review of your response.

The NRC staff reviewed FirstEnergy Nuclear Operating Company’s basis for disagreeing with the NCV. The staff involved with the review was independent of the initial inspection effort. Based upon a thorough review of your position, and in coordination with the Offices of Enforcement and Nuclear Security and Incident Response, the NRC concludes that a violation of regulatory requirements did not occur as presented in the subject inspection report. Accordingly, the NCV is hereby withdrawn, and we will modify our records accordingly. The basis for this decision is that the requirement for the notification of the State within 15 minutes is not applicable to the situation which occurred at Davis-Besse on the morning of June 25, 2009. Specifically, at approximately 07:50 a.m. (Eastern Time), approximately 7 hours after an event occurred in the switchyard, Davis-Besse staff recognized the failure to properly classify the event as an Alert condition. Since emergency conditions no longer existed at the time of this after-the-fact recognition, notification of State and local agencies was not required within 15 minutes.
Notwithstanding this decision, the NRC places a high value on open and timely communications with State and local emergency response personnel. The NRC recognizes that these organizations not only have responsibility for immediate emergency response measures, but also for public information. Ensuring that these organizations are informed of such conditions in a timely manner enables the State and local entities to better fulfill these functions. During our review, we noted facility procedure NOP-LP-5003, “Communicating Events of Potential Public Interest,” provides the protocol for communicating information to the State and local public safety agencies regarding events of potential public interest. During this event, communications to the offsite agencies occurred about 12 hours after the initiating event, 11 hours after offsite emergency vehicles responded to the event and 4.5 hours after recognition of the missed Alert classification. We will pursue this during a subsequent routine inspection.

In accordance with 10 CFR 2.390 of the NRC’s "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System (PARS) component of NRC’s Agency wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

If you have any questions regarding this matter, please contact Mr. Hironori (Pete) Peterson of my staff at (630) 829-9707.

Sincerely,

/RA/

Cynthia D. Pederson
Deputy Regional Administrator

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