GREENPEACE
702 H Street, NW, Suite 300, Washington, DC 20001
Tel: 202-462-1177 ? Fax: 202-462-4507
www.greenpeaceusa.org

August 25, 2003

Mr. William Travers
Executive Director for Operations
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: PETITION PURSUANT TO 10 CFR 2.206: A REQUEST FOR ENFORCEMENT ACTION AGAINST FIRST ENERGY NUCLEAR OPERATING COMPANY

Dear Mr. Travers:

On behalf of the Nuclear Information & Resource Service and the Union of Concerned Scientists, Greenpeace submits this petition pursuant to 10 CFR §2.206 requesting that the U.S. Nuclear Regulatory Commission take enforcement action against First Energy Nuclear Operating Company for failure to complete the design basis document validation program which the licensee had committed to complete in response to the NRC's October 1996 10 CFR 50.54 (f) letter on the adequacy and availability of design basis information.

In October 1996, the U.S. Nuclear Regulatory Commission (NRC) sent letters to every nuclear reactor licensee requiring that they provide information to the NRC concerning the adequacy and availability of design bases information. The Commission not only required that the utility chief executive officers provide this information, but that they swear to it. Under oath or affirmation, the utility CEO's were to provide:

> Information documenting current practices for concluding that the plant is consistent with its design and processes for identification of problems and implementation of corrective actions.

(U.S. Nuclear Regulatory Commission, Office of Public Affairs, NRC Requests Information From All Licensees On Maintaining Plant Design, No. 96-137, October 9, 1996.)

The CEOs were to inform the NRC as to whether they had undertaken any programs to review the accuracy and completeness of their reactors'design basis. If so, they had to describe how these programs would ensure that their reactors had accurate information, were using it and that this information was being kept up-to-date. If the CEOs had not instituted a design basis program they had to provide the NRC with some rationale.

As part of the response to the NRC's 50.54(f) letter concerning Davis Besse the licensee was to conduct the Design Basis Document Validation Program (DBDVP). However, according to the NRC's Special Inspection – System Health Assurance report dated February 26, 2003, "the program had not been completed and a portion of the deficiencies identified had not been properly corrected." (U.S. Nuclear Regulatory Commission, Davis Besse Nuclear Power Station, NRC Special Inspection – System Health Assurance Reports No. 50-346/02-13(DRS) and 50-346/02-14(DRS), February 26, 2003, p. 11.) Additionally the NRC inspection stated that:

> The project, though a commitment to NRC in response to the 10 CFR 50.54.f letter, was delayed about two years due to engineering resource considerations…. from all of the systems validated, there were slightly more than 1000 identified deficiencies. These were characterized as either high, medium, or low significance and work was initiated to correct them. At the close of this inspection, approximately 200 deficiencies had not been corrected. The inspectors reviewed the deficiency tracking list and open item log sheets for the service water and found where the resolution of an issue assigned a high significance rating was inadequate.

(U.S. Nuclear Regulatory Commission, Davis Besse Nuclear Power Station, NRC Special Inspection – System Health Assurance Reports No. 50-346/02-13(DRS) and 50-346/02-14(DRS), February 26, 2003, p. 12.)

Although the licensee has once again committed to conduct the design basis document validation program and explain why the previous program had been both inadequate and incomplete, the public can have no confidence that the new program will be any better than the ones the licensee has already failed to adequately implement over the previous three decades.

Furthermore, the NRC has been unable to provide the public with any documentation as to how the 1000 deficiencies identified in 1997 had been dispositioned. What is equally disturbing is that the NRC had relied upon these same system health inspections as the basis for denying Congressman Kucinich's 2.206 petition. How can the NRC deny a petition based upon information it does not possess? Do the words "arbitrary" and "capricious" mean anything to this Commission?

As NRC is well aware, absent compliance with the design and licensing basis, it is impossible for the agency to determine that a reactor does not pose a threat to the public health and safety. However, the licensee has repeatedly submitted licensee event reports (LERs) documenting design basis deficiencies that date back to when Davis Besse was originally licensed. These LERs are additional evidence that the licensee has repeatedly failed to maintain the design and licensing basis of the Davis Besse reactor despite repeated opportunities to do so. These LERs include:

LER 2002-004	Containment Isolation Closure Requirements for RCP Seal Injection Values

"incapable of closing since initial plant start up…"

LER 2002-005 Potential Clogging of the Emergency Sump Due to Debris in Containment.

"The condition….had existed in the sump screen apparently since the installation of the strainer during construction…"

LER 2002-006 Emergency Deisel Generator Exhaust Piping Not Adequately Protected from Potential Tornado Generated Missiles

"these design deficiencies for the protection of safety equipment have existed since initial plant operation…."

LER 2003-002 Potential Degradation of High Pressure Injection Pumps Due to Debris in the Emergency Sump Fluid Post Accident

"When the plant design was developed, the design of the HPI pump and the use of a hydrostatic bearing was apparently not adequately evaluated…"

LER 2003-003 Potential Inadequate HPI Pump Minimum Recirculation Flow Following SBLOCA

"This condition has existed since the original design of DBNPS."

LER 2003-005 Containment Gas Analyzer Heat Exchanger Valves Found Closed Rendering the Containment Gas Analyzer Inoperable

"Based on the mechanical binding which existed on each of the valves and that no maintenance activities were identified that would have required the isolation valves to be closed, it appears that these valves have been in a closed position since the plant startup in 1977."

LER 2003-007 AC System Analysis Shows Potential Loss of Offsite Power Following Design Basis Event

"Although this condition appears to be an original design basis deficiency, no specific case could be found for why the ELMS modeling did not include the most limiting scenario, which may be due in part to the fact that the ELMS modeling was completed over ten years ago."

While the public is appreciative of the fact that Davis Besse is now, finally after nearly three decades, identifying long-standing design basis deficiencies, we are at a loss as to how these problems could have repeatedly escaped the NRC's and the licensee's scrutiny since 1977. The NRC has time and again been forced to acknowledge that the

Davis Besse reactor has failed to meet its design and licensing basis and that the numerous programs to address these deficiencies have been inadequate. It is imperative for the NRC to sanction Davis Besse for failure to honor its design basis obligations. The NRC's license renewal rule (10 CFR 52) assumes that plants seeking license extension are in compliance with their current licensing basis. Failure to sanction Davis Besse for such blatant non-compliance with their current licensing basis will undermine the Commission's regulatory basis for granting license renewal requests.

The licensee event reports concerning the HPI pumps are particularly disturbing since this was the very same system that the NRC inspected in the wake of the Millstone debacle in May and June of 1997. At that time the NRC concluded that both the HPI system injection flow rate and the HPI pump net positive suction head were adequate. (U.S. Nuclear Regulatory Commission, Davis Besse Nuclear Power Station, Report No.: 50-346/97-201, May 5-9, May 19-23, and June 9-20, 1997.) The NRC had initiated Generic Safety Issue No. 191 (GSI-191) on pressurized water reactor containment sump failure in September 1996. Both of the safety systems examined by the NRC team during the 1997 design basis inspection at Davis Besse took water from the containment sump. However, the NRC inspection team did not bother looking at the Davis Besse containment sump relative to the GSI-191 safety concern.

Consequently, Greenpeace, the Nuclear Information & Resource Service and the Union of Concerned Scientists ask that the U.S. Nuclear Regulatory Commission:

1. take enforcement action against First Energy Nuclear Operating Company for failure to live up to their commitments made in response to the NRC's October 1996 10 CFR 50.54(f) letter. Since the 10CFR 50.54(f) letter was issued in direct response to the problems at Millstone that netted its owner a record $2.1 million fine from the NRC, failure to heed the Millstone warning should carry at least an equivalent sanction.

2. take enforcement action against First Energy Nuclear Operating Company for the numerous design basis violations dating back to the date of licensure with penalties for each day that the licensee was out of compliance with NRC regulations.

3. suspend the license and prohibit restart of the Davis Besse reactor unless and until First Energy Nuclear Operating Company has adequately addressed all 1000 design basis deficiencies identified in 1997.

4. suspend the license and prohibit restart of the Davis Besse reactor unless and until First Energy has updated its Probabilistic Risk Assessment to reflect the flaws in it design and licensing basis.

5. suspend the license and prohibit restart of the Davis Besse reactor with any systems in a "degraded but operable" condition.

Sincerely,

James Riccio
Nuclear Policy Analyst
Greenpeace
702 H street NW Suite 300
Washington, DC 20001

Paul Gunter
Director Nuclear Watchdog Project
Nuclear Information & Resource Service
1424 16th Street NW Suite 401
Washington, DC 20009

David Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientist
1707 H street NW Suite 600
Washington, DC 20006