

RAS 7603

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/15/04

SERVED 04/15/04

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

FIRSTENERGY NUCLEAR OPERATING CO.

(Davis-Besse Nuclear Power Station, Unit 1)

Docket No. 50-346-CO

ASLBP No. 04-825-01-CO

April 15, 2004

MEMORANDUM AND ORDER
(Initial Prehearing Order)

In the above-captioned proceeding, the NRC staff has issued an immediately effective confirmatory order modifying the 10 C.F.R. Part 50 operating license for the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio. Under that order, licensee FirstEnergy Nuclear Operating Company (FENOC), will be required to undertake certain measures designed to address performance deficiencies relating to the March 2002 discovery of a corrosion-induced cavity in the Davis-Besse Unit 1 reactor pressure vessel. Currently pending with the Licensing Board is a March 29, 2004 petition from various individuals objecting to the staff's confirmatory order.

In accordance with 10 C.F.R. §§ 2.318(a), 2.319, the following directives shall apply to the conduct of this proceeding:

A. Notice of Appearance

If they have not already done so, within seven days of the date of this memorandum and order, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance,

besides providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information within seven days of the date of this issuance.

B. Service on the Licensing Board and Other Participants

1. Service on the Licensing Board

For each pleading or other submission filed before the Licensing Board or the Commission in this proceeding, subject to the requirement of section B.1.g below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other participant in this proceeding in accordance with section 2.305(b), a participant should serve conforming copies on the Board as follows:

a. Regular Mail. To complete service on the Licensing Board, a participant should send conforming copies to each of the Board members at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the Licensing Board via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to the Board members at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

It should be noted that use of the Licensing Board's regular mail address (see section B.1.a above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the Licensing Board by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the Licensing Board Chairman at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to the Board members by regular mail at the address given in section B.1.a above.

d. E-Mail. To complete service on the Licensing Board by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the Board members (gpb@nrc.gov, cnk@nrc.gov, and psl@nrc.gov); and (ii) send paper conforming copies that same date to the Board members by regular mail at the address given in section B.1.a above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to the presiding officer by regular mail at the address given in section B.1.a above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to the presiding officer by express

mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To make timely service on the Licensing Board, any pleading or other submission served by (i) hand delivery must be received by 4:30 p.m. Eastern Time; and (ii) facsimile transmission or e-mail must be received by the Board on the due date no later than 5:00 p.m. in the time zone of the participant to the proceeding (other than the participant filing the pleading or other submission) within the most western United States time zone, as reflected by the locations upon which the certificate of service indicates the document was served.

f. Service on Other Participants. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Licensing Board, the participant serving the pleading should make service on all other participants and the Office of the Secretary (e-mail: hearingdocket@nrc.gov; facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)) by the same or a comparable method.

g. Service of all Filings. Absent some other directive from the Licensing Board, all filings in these cases directed to the Board shall be served on the Board and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Board, the participants may use any of the methods outlined above so long as the filing is timely received by the Board and the other participants.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent

preapproval of the Licensing Board.¹ A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Licensing Board preapproval to file a reply shall be sought in writing no less than three business days prior to the time the reply will be filed.² A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the Licensing Board in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

¹ The FENOC and staff responses to the petitioners' March 29 objections to the confirmatory order and any intervenor reply to those responses permitted under 10 C.F.R. § 2.309(h) are not subject to this page limitation.

² Although the agency's rules of practice do not provide for reply pleadings, the Licensing Board will presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Licensing Board, the Office of the Secretary, and counsel for the other participants in the particular proceeding by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

F. Exhibits/Attachments to Filings.

If a participant files a pleading or other submission with the Licensing Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section C.1 above.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 15, 2004

³ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel or the representative for (1) licensee FENOC; (2) the individual petitioners; and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
FIRSTENERGY NUCLEAR)	Docket No. 50-346-CO
OPERATING COMPANY)	
)	
(Davis-Besse Nuclear Power Station,)	
Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by electronic mail, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: cnk@nrc.gov

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: psl@nrc.gov

Lawrence J. Chandler, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ljc@nrc.gov

Terry J. Lodge, Esq.
316 N. Michigan St., Suite 520
Toledo, OH 43624-1627
E-mail: tjlodge50@yahoo.com

Docket No. 50-346-CO
LB MEMORANDUM AND ORDER (INITIAL
PREHEARING ORDER)

Lew W. Myers
Chief Operating Officer
FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station
5501 North State Route 2
Oak Harbor, OH 43449-9760
E-mail: lwm Myers@firstenergycorp.com

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of April 2004