

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman  
E. Roy Hawkens  
Dr. Peter S. Lam

In the Matter of

ANDREW J. SIEMASZKO

Docket No. IA-05-021-EA

ASLBP No. 05-839-02-EA

June 9, 2006

RESPONSE TO ORDER DATED JUNE 9, 2006

(Providing Position of Union of Concerned Scientists On Discretionary Intervention)

INTRODUCTION

On June 9, 2006, the Board issued an Order directing the Union of Concerned Scientists (UCS) and Ohio Citizen Action to inform the Board no later than June 16, 2006, whether we wished to still obtain discretionary intervention status in the proceeding involving Andrew J. Siemaszko. The Order cited a number of factors, including the passage of time, the Indictment handed up by a federal grand jury in the Northern District of Ohio involving Mr. Siemaszko, and the Commission's June 2, 2006, decision remanding the UCS and Ohio Citizen Action discretionary intervention issue back to the Board for reconsideration, as basis for revisiting the matter.

DISCUSSION

As the Board noted in its Order, 13 months have passed since UCS/OCA initially sought to intervene in this proceeding and, because of the indefinite stay requested by the NRC Staff which was granted by the Board and affirmed by the Commission, it may be years before this Board conducts a hearing to adjudicate the allegations which the NRC staff made against Mr.

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SEL4-02

Siemaszko. It is entirely appropriate that the Board poll our continued interest in the proceeding before it expends the time and effort to adjudicate whether UCS/OCA should be granted discretionary intervention status. We gladly reaffirm our strong desire and interest in participating in this proceeding as a party despite the passage of time, the occurrence of significant intervening events, and the uncertainty regarding when the Siemaszko hearing will be held.

While events have caused the proceeding to be postponed/suspended, those events have not diminished our interest in the matter. During the past 13 months, we have read literally hundreds of additional documents relevant to the proceeding. These documents, mostly internal FirstEnergy documents, had not been previously available to us. None of the information contained within these documents alters – in any way – our position that Mr. Siemaszko has been wronged by the NRC's action against him. Mr. Siemaszko is represented by very capable counsel who will very likely effect his acquittal or otherwise undo the NRC's wrongdoing. Our strong desire extends beyond that worthy outcome. If that were our sole interest, we could – at far greater convenience for us – volunteer to support Mr. Siemaszko's counsel in a variety of ways up to and including serving as an expert witness. But, as we have discussed in prior submittal, we are equally interested in probing – within the clearly defined bounds established by the Board – the reasons why the NRC erred in deciding to take action against Mr. Siemaszko. From our public interest group perspective, it is as important to try to identify whatever process flaws factored in the NRC's ill-advised action against Mr. Siemaszko as it is to undo the damage that action did to him. Identification of process flaws can contribute significantly to the record for this matter. We seek to prevent the next wrongful prosecution as much as remedy this one.

Regarding the passage of time, as noted above it has not diminished our interest at all. On balance, we hasten to point out that while the passage of time has seen some of the key individuals retire or move on, we are still here. For example, Keith Wichman worked for the NRC in 2001 as the agency deliberated FirstEnergy's request to operate Davis-Besse past the end of

2001 without performing the mandated inspections. Mr. Wichman has retired from the NRC. We are still here. Frank Congel was the Director of the NRC's Office of Enforcement as the sanction against Mr. Siemaszko were being developed. Mr. Congel has retired from the NRC. We are still here. Dr. Nils Diaz was Chairman of the NRC when the events at Davis-Besse occurred and the sanction was levied against Mr. Siemaszko. Chairman Diaz's term as expired. We are still here. Unlike many currently involved in this proceeding, we have been engaged all along. We are not second, third, or fourth generation handlers of the matter. If anything, the passage of time, particularly as much time as this proceeding may accumulate, increases the need for involvement by people like us who have been "in the trenches" since the onset.

#### CONCLUSION

The Union of Concerned Scientists and Ohio Citizen Action hereby inform the Board that we still wish discretionary intervention status in this proceeding. We sincerely believe that the contribution we can make to a sound record in this matter far outweighs the burden our participation places on the Board, such as reaching another decision on our status. We are keeping a mental tally of the Board's burden resulting from our participation to use as additional motivation to ensure, at the end of the proceeding, we are on the plus side of the ledger.<sup>1</sup>

ON BEHALF OF OHIO CITIZEN ACTION  
AND THE UNION OF CONCERNED SCIENTISTS



David A. Lochbaum  
Director, Nuclear Safety Project

Washington, DC  
June 9, 2006

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<sup>1</sup> Copies of this order were sent this date by Internet e-mail transmission to all persons on the attached service list.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response have been served upon the following persons by electronic mail this date, and by deposit of paper copies in the U.S. mail, first class, this date.

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[Original signed by]  
David A. Lochbaum  
Director, Nuclear Safety Project  
Union of Concerned Scientists

Dated at Washington, DC  
this 9<sup>th</sup> day of June 2006