

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

Before Administrative Judges:

William J. Froehlich, Chairman  
Nicholas G. Trikouros  
Dr. William E. Kastenberg

In the Matter of:

FirstEnergy NUCLEAR OPERATING  
COMPANY

(Davis-Besse Nuclear Power Station, Unit 1)

Docket No. 50-346-LR

ASLBP No. 11-907-01-LR-BD01

May 10, 2011

NOTICE AND ORDER  
(Setting Telephonic Initial Scheduling Conference)

On April 26, 2011, the Licensing Board issued a memorandum and order granting the request for a hearing and admitting two contentions filed jointly by four organizations: Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio.<sup>1</sup> These petitioners, now parties, challenge the application of FirstEnergy Nuclear Operating Company (FirstEnergy) to extend its operating license for the Davis-Besse Nuclear Power Station, Unit 1, located in northwestern Ohio on the southwestern shore of Lake Erie, for an additional twenty years from the current expiration date of April 22, 2017 to April 22, 2037.<sup>2</sup> The Board determined that the procedures of 10 C.F.R. Part 2, Subpart L, will govern the hearing to be held on the admitted contentions.<sup>3</sup>

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<sup>1</sup> LBP-11-13, 73 NRC \_\_, \_\_ (slip op. at 64-65) (Apr. 26, 2011).

<sup>2</sup> Id. at \_\_ (slip op. at 1-2).

<sup>3</sup> Id. at \_\_ (slip op. at 63-64).

In accordance with 10 C.F.R. § 2.332, the Board will hold an initial scheduling conference call on May 19, 2011, at 1:00 PM EDT for the purpose of developing a scheduling order to govern the conduct of this proceeding. Prior to the conference call, the parties should familiarize themselves with the relevant procedural rules of 10 C.F.R. Part 2, including the model milestones set forth in Appendix B. Pending the conference call, the parties' initial disclosure obligations are temporarily suspended.<sup>4</sup>

Pursuant to 10 C.F.R. § 2.332(d), the Board will consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. According to the currently posted schedule, the NRC Staff will issue the final supplemental environmental impact statement and the safety evaluation report in, respectively, May 2012 and July 2012.<sup>5</sup> On or before May 17, 2011, the NRC Staff shall confirm its current best estimate of the schedule for completing such evaluations.

Among other matters, the parties should be prepared to address the following subjects during the May 19th conference call:

1. FirstEnergy's Unopposed Motion to Defer Initial Disclosures, filed May 6, 2011.
2. Establishment of an agreement concerning which electronically stored information will be considered reasonably accessible and thus subject to mandatory disclosure under 10 C.F.R. § 2.336 or production under 10 C.F.R. § 2.1203 (e.g., an agreement between the parties and the NRC Staff as to the nature and extent of their respective duties to conduct a reasonable search for their electronically stored information).
3. Establishment of an agreement as to the form of the mandatory disclosure or production of electronically stored information (if no agreement can be reached, and the Board

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<sup>4</sup> This temporary suspension is without prejudice to any action the Board may take in response to FirstEnergy's motion to defer initial disclosures. FirstEnergy's Unopposed Motion to Defer Initial Disclosures (May 6, 2011).

<sup>5</sup> NRC: Davis-Besse Nuclear Power Station, Unit 1 – License Renewal Application, <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/davis-besse.html> (last visited May 9, 2011).

does not otherwise instruct, then electronically stored information shall be disclosed and produced in an electronic form that is readily searchable by commonly available computer programs).

4. Whether any party expects to assert a privilege or protected status for any information or documents otherwise required to be disclosed in this proceeding and, if so, proposals for procedures and time limits for challenges to such assertions, and whether development of a protective order and non-disclosure agreement is necessary or appropriate.

5. Suggested regularized time frames for the updating of mandatory disclosures under 10 C.F.R. § 2.336(d) and for the updating of the hearing file under 10 C.F.R. § 2.1203(c).

6. Suggested time limits for motions for leave to file new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii).

7. Specification of pleading rules for motions for leave to file new or amended contentions that reconcile 10 C.F.R. §§ 2.309(c), 2.309(f)(2), and 2.323 (motions and answers to motions) with 10 C.F.R. § 2.309(h) (answers and replies to contentions).

8. Opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338.

9. Suggested time limit for filing of the final list of potential witnesses for each contention pursuant to 10 C.F.R. § 2.336(a)(1).

10. Whether a site visit would be helpful to the Board in the resolution of the admitted contentions.

11. The degree to which Board's consideration of summary disposition motions will expedite the proceeding and, if so, suggestions for modifying the time limits set in 10 C.F.R. § 2.1205(a) to prevent motions for summary disposition from conflicting with preparation for the evidentiary hearing.

12. Suggested venues for holding the evidentiary hearing.

13. Whether the parties should be required to file their respective initial written

statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially and, if sequentially, in what order.

14. Suggested time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204(b).

Before the conference call, the parties shall confer in good faith for the purpose of reaching agreement on the above-listed issues, insofar as practicable.

On or before May 17, 2011, representatives of each of the parties should contact the Board's Law Clerk, Hillary Cain, at 301-415-7703 to obtain the telephone number and pass code for the prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Ms. Cain at the above number for the requisite information.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
May 10, 2011

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<sup>6</sup> Copies of this notice and order were sent this date by the NRC's E-Filing System to the counsel/representatives for: (1) Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio; (2) FirstEnergy; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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FIRST ENERGY NUCLEAR OPERATING )  
COMPANY )  
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(Davis-Besse Nuclear Power Station, Unit 1) ) Docket No. 50-346-LR  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE AND ORDER (Setting Telephonic Initial Scheduling Conference) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 50-346-LR  
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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 10<sup>th</sup> day of May 2011