

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 24, 2011

NOTICE OF HEARING

This proceeding concerns the application filed by FirstEnergy Nuclear Operating Company (FirstEnergy) to extend its operating license for the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse) for an additional twenty years from the current expiration date of April 22, 2017 to April 22, 2037, pursuant to Part 54 of Title 10 of the Code of Federal Regulations.¹ In response to an October 25, 2010 notice of opportunity for hearing published in the Federal Register,² a petition to intervene and request for hearing setting forth four contentions was filed jointly on December 27,

¹ License Renewal Application; Davis-Besse Nuclear Power Station 1.0-1, 1.1-1 (Aug. 2010) (ADAMS Accession Nos. ML102450567, ML102450563). The application also seeks renewal of the associated source material, special nuclear material, and by-product material licenses under 10 C.F.R. Parts 30, 40, and 70. Id. at 1.0-1.

² Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing for Facility Operating License No. NPF-003 for an Additional 20-Year Period; First[E]nergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1, 75 Fed. Reg. 65,528 (Oct. 25, 2010).

2010 by four organizations: Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario (CEA), Don't Waste Michigan, and the Green Party of Ohio.³ On January 13, 2011, this Board was established to preside over the instant proceeding,⁴ and on March 1, 2011 the Board held an oral argument in Port Clinton, Ohio, on standing and contention admissibility.⁵

In an April 26, 2011 memorandum and order, the Board ruled that all four petitioning organizations (now Joint Intervenors) had standing to intervene in this proceeding.⁶ The Board admitted: (1) a reformulated and consolidated version of Contentions 1, 2, and 3 regarding renewable energy alternatives,⁷ and (2) a narrowed version of Contention 4 regarding severe accident mitigation alternatives (SAMAs).⁸ The admitted contentions are as follows:

Contention 1:

The FirstEnergy Nuclear Operating Company's Environmental Report fails to adequately evaluate the full potential for renewable energy sources, specifically wind power in the form of interconnected wind farms and/or solar photovoltaic power, in combination with compressed air energy storage, to offset the loss of energy production from Davis-Besse, and to make the requested license renewal action unnecessary. The FENOC Environmental Report (§ 7.2) treats all of the alternatives to license renewal except for natural gas and coal plants as unreasonable and does not provide a substantial analysis of the potential for significant alternatives in the Region of Interest.

Contention 4:

The Environmental Report (ER) is inadequate because it underestimates the true cost of a severe accident at Davis-Besse in violation of 10 C.F.R. § 51.53(C)(3)(ii)(L) and Further Analysis by the Applicant, FirstEnergy, is called for because of: (1) Minimization of the potential amount of radioactive material released in a severe accident by using a source term based on radionuclide release fractions which are smaller for key radionuclides than the release fractions specified in NRC guidance; (2) Use of an inappropriate air dispersion model, the straight-line Gaussian

³ Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio Request for Public Hearing and Petition for Leave to Intervene (Dec. 27, 2010).

⁴ Establishment of Atomic Safety and Licensing Board (Jan. 13, 2011).

⁵ See Tr. 1-239.

⁶ LBP-11-13, 73 NRC __, __ (slip op. at 2) (Apr. 26, 2011).

⁷ Id. at 34 n.199, 34-35.

⁸ Id. at 62.

plume, that does not allow consideration for the fact that winds for a given time period may vary spatially, ignores the presences of Great Lakes “sea breeze” circulations which dramatically alter air flow patterns, fails to account for hot spots of radioactivity caused by plumes blowing offshore over Lake Erie, and is based on meteorological inputs collected from just one site—at Davis-Besse itself; and (3) Use of inputs that minimized and inaccurately reflected the economic consequences of a severe accident, specifically particle size and clean-up costs for urban areas.⁹

The Board ruled that the procedures of Subpart L shall be used for these admitted contentions.¹⁰

On May 6, 2011, pursuant to 10 C.F.R. § 2.311, FirstEnergy filed a notice of appeal of the Board’s April 26, 2011 memorandum and order.¹¹ The filing of an appeal does not stay or delay the effect of a licensing board order on contention admissibility. “Interlocutory appeals or petitions to the Commission are not devices for delaying or halting licensing board proceedings.”¹² On May 11, 2011, pursuant to 10 C.F.R. § 2.1202(b), the NRC Staff notified the Board of its intent to participate as a party in this adjudicatory proceeding with respect to all of the admitted contentions.¹³

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. The Board may conduct an oral argument,¹⁴ hold pre-hearing conferences,¹⁵ and conduct evidentiary hearings.¹⁶ Unless otherwise ordered by the Commission, the public is invited to attend any oral argument, prehearing conference, or evidentiary hearing.¹⁷ Notices of these sessions will be published in the Federal Register and/or made available to the public at the NRC

⁹ Id. at 64-65.

¹⁰ Id. at 65.

¹¹ FirstEnergy’s Notice of Appeal of LBP-11-13 (May 6, 2011).

¹² Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-9, 40 NRC 1, 6 (1994).

¹³ NRC Staff’s Notice of Intent to Participate as a Party (May 11, 2011).

¹⁴ See 10 C.F.R. § 2.331.

¹⁵ See id. § 2.329.

¹⁶ See id. §§ 2.327-.328, 2.1206-.1208.

¹⁷ Id. § 2.328.

Public Document Room, located at One White Flint, 11555 Rockville Pike (first floor), Rockville, MD, and through the NRC website, www.nrc.gov.

The Administrative Dispute Resolution Act of 1996¹⁸ encourages the use of alternative dispute resolution by federal agencies. The parties are encouraged to explore voluntary processes, including settlement talks with or without a neutral, to resolve the issues in this case.¹⁹ Upon request, a settlement judge from the Atomic Safety and Licensing Board Panel (ASLBP) could be appointed.²⁰

Additionally, as provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding.²¹ These statements do not constitute evidence²² but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary by one of the methods prescribed below:

Mail to: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1966)

Email to: hearing.docket@nrc.gov

¹⁸ 5 U.S.C. §§ 571-584.

¹⁹ 10 C.F.R. § 2.338.

²⁰ Id. § 2.338(b).

²¹ Id. § 2.315(a).

²² Id.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge William J. Froehlich
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Fax to: (301) 415-5599 (verification (301) 415-7550)

Email to: william.froehlich@nrc.gov

At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Davis-Besse facility. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room and on the NRC website, www.nrc.gov.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC website at www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by email to pdr.resource@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²³

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 24, 2011

²³ Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) the Joint Intervenors; (2) FirstEnergy; and (3) the NRC Staff.

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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
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF HEARING has been served upon the following persons by Electronic Information Exchange.

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 24th day of May 2011