

October 12, 2011

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of) Docket No. 50-346

First Energy Nuclear Operating Company)
(Davis-Besse Nuclear Power Station, Unit 1))

(Regarding the Renewal of Facility)
Operating License NPF-003 for a 20-Year)
Period))

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**REFILED MOTION FOR LEAVE FOR INTERVENORS' OPPOSITION TO FENOC
AND NRC STAFF MOTIONS TO STRIKE PORTIONS OF INTERVENORS'
REPLY IN SUPPORT OF ADMITTING CONTENTION CONCERNING
FUKUSHIMA DAI-ICHI ACCIDENT TO BE DEEMED FILED *INSTANTER***

Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio ("Intervenors"), by and through counsel, hereby REFILE¹ their motion move to have their "Opposition to FENOC and NRC Staff Motions to Strike Portions of Intervenors' Reply in Support of Admitting Contention Concerning Fukushima Dai-ichi Accident" to be deemed filed *instanter* as of October 6, 2011.

Intervenors' counsel admits that he inadvertently believed that his clients' response to the motions to strike was due 14, not 10, days following filing, which would have been October 6,

¹Intervenors filed this motion with the EIE program in Wordperfect X4 format on Friday, October 7, 2011. There has been no acknowledgment nor notice of that motion filing sent to counsel for Intervenors. Consequently, Intervenors now refile the motion in .pdf format.

2011. Counsel has extensive practice experience in the federal courts, where 14 days is the rule norm for response to procedural motions. His was an honest mistake, for counsel has been overwhelmed with work. During the week of September 30, some 20 hours of his time was spent in preparing voluminous discovery responses in a civil rights lawsuit, *Golembiewski v. Logie*, Case No. 11-cv-57, pending in U.S. District Court in Toledo. Then counsel was required to prepare for oral argument at the Sixth Circuit Circuit Court of appeals in a complicated environmental law appeal captioned *Weiss v. Salazar*, Case No. 10-1313, on October 11, 2011. Over 250 pages of briefing has been filed in that matter. Also as to that appeal, counsel must respond to a 13-page "Suggestion of Mootness" filed in Case No. 10-1313 on September 29, 2011, which is due prior to the oral argument, as undoubtedly the topic of alleged mootness will be an issue on October 11 at oral argument.

Counsel further had to finalize and file a response to a motion for summary judgment in a state court insurance coverage case captioned *Mason v. Hallowell*, Case No. CI 0201007239, pending in Lucas County (Ohio) Court of Common Pleas on October 5. That motion for summary judgment was filed in early August (and the response did get in). Finally, counsel had to research and prepare the late-filed memorandum in opposition to the FENOC and NRC motions to strike in this NRC operating license renewal case, laboring under the incorrect impression that he had until October 6, 2011 as a deadline, for which counsel apologizes.

Intervenors filed on October 6 a 5 page memorandum setting forth arguments of law as their opposition to the motions to strike. FENOC and the NRC Staff can ill maintain that they are prejudiced by the 3-day delay in filing, as the addition of 3 days to the overall time the Board expends in determining the motions to strike should be of negligible import.

Intervenors submit that the longstanding, pre-existing workload of their attorney as outlined above provides adequate explanation such as should allow their memorandum to be considered part of the record. Counsel and Intervenors do not have a record of delaying these proceedings and have repeatedly met the time constraints imposed by NRC regulations and procedure.

WHEREFORE, Intervenors pray the Court allow their opposition memorandum to the motions to strike to be deemed timely filed, *instanter*, as of October 6, 2011.

Respectfully submitted this 12th day of October, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “MOTION FOR LEAVE FOR INTERVENORS’ OPPOSITION TO FENOC AND NRC STAFF MOTIONS TO STRIKE PORTIONS OF INTERVENORS’ REPLY IN SUPPORT OF ADMITTING CONTENTION CONCERNING FUKUSHIMA DAI-ICHI ACCIDENT TO BE DEEMED FILED *INSTANTER*” have been served on the following persons via Electronic Information Exchange this 12th day of October, 2011:

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