

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) FIRSTENERGY NUCLEAR OPERATING COMPANY) (Davis-Besse Nuclear Power Station, Unit 1))) Docket No. 50-346-LR)) November 1, 2011)
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**FENOC’S UNOPPOSED MOTION FOR MODIFICATION OF
PARAGRAPH A.2. OF THE BOARD’S INITIAL SCHEDULING ORDER**

In accordance with 10 C.F.R. § 2.323(a), FirstEnergy Nuclear Operating Company (“FirstEnergy” or “FENOC”) files this motion requesting that the Board modify the requirement regarding updates to mandatory disclosures so that they are now due at the end of each month instead of by the 15th of each month. In paragraph A.2. of the Board’s June 15, 2011 Initial Scheduling Order, “the Board directs that updates to mandatory disclosures and to the NRC Staff’s hearing file shall be filed no later than the 15th of every month, commencing the calendar month after initial disclosures, and shall cover all documents or other material or information required to be disclosed that are in the possession, custody, or control of each party (or its agents) as of the last day of the preceding month.”

FENOC requests that the Board modify this requirement such that each party would file its monthly updates to mandatory disclosures “no later than the last calendar day of each month,” commencing the calendar month after initial disclosures, and covering all documents or other material or information required to be disclosed that are in the possession, custody, or control of

each party (or its agents) as of the last day of the preceding month.¹ In essence, the modification that FENOC is requesting is a full calendar month to produce the updates rather than the 15 calendar days currently required under the Initial Scheduling Order. The remainder of the monthly update requirements would not change.

Counsel for FENOC has consulted with Brian Harris (for the NRC Staff) and with Terry Lodge (for Joint Petitioners). They do not oppose this Motion, and would want the relief granted to them as well. Also, if the Board grants this Motion, the Staff would want the Board to modify paragraph F.2. of the Initial Scheduling Order so that the Staff's requirement to submit a monthly status report for the schedule for the draft and final versions of the SER and SEIS is made concurrent with the monthly updates at the end of each month, instead of the 15th of each month.

Under 10 C.F.R. § 2.334(b), a hearing schedule may be modified for "good cause." The Board can find good cause supporting this Motion because:

1. FENOC has identified more than 50 custodians from whom potentially-relevant electronic and hard copy documents would need to be evaluated for the monthly updates of FENOC's document disclosures for Contentions 1 and 4;
2. FENOC also identified seven different corporate sources of records which require different Information Technology leads to retrieve and which generate multiple electronic formats of documents, in six different locations, from which potentially-relevant documents would need to be retrieved and evaluated for these monthly updates;
3. FENOC also identified at least one off-site contractor from whom potentially-relevant documents would need to be retrieved and evaluated for these monthly updates;

¹ If the last calendar day of the month falls on a weekend or a holiday observed by the NRC, then the disclosure updates would be due on the next day that is not a weekend or holiday.

4. Fully aware of the Board's 15-day requirement, FENOC recently performed a "dry-run" of a monthly update to its mandatory disclosures in an attempt to assess how long it would take to identify, collect, and review potentially-relevant documents from the sources listed above in paragraphs 2 through 4, on a monthly basis;
5. During this "dry-run" it became apparent that FENOC cannot reasonably meet the 15-day turnaround required by paragraph A.2. of the Initial Scheduling Order. Rather, a full calendar month is necessary for FENOC to meet its obligations to update the mandatory disclosures;
6. Granting the motion maintains the requirement for each party to provide a monthly update to mandatory disclosures; and
7. Neither the NRC Staff nor the Joint Petitioners oppose the motion.

For the foregoing reasons, the Board should grant this unopposed motion.

Respectfully submitted,

Signed (electronically) by Alex S. Polonsky

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COUNSEL FOR FENOC

Dated in Washington, D.C.
this 1st day of November 2011

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “FENOC’S UNOPPOSED MOTION FOR MODIFICATION OF PARAGRAPH A.2. OF THE BOARD’S INITIAL SCHEDULING ORDER” was filed with the Electronic Information Exchange in the above-captioned proceeding on the following recipients.

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