

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

March 28, 2012

NOTICE AND ORDER

(Scheduling Oral Argument)

On January 10, 2012, Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (collectively Intervenors) filed a proposed Contention 5 in this proceeding.¹ This Board issued an Order on February 13, 2012 stating that we would hear oral argument on its admissibility.²

Contention 5 as proposed by the Intervenors reads as follows:

Intervenors contend that FirstEnergy's recently-discovered, extensive cracking of unknown origin in the Davis-Besse shield building/secondary reactor radiological containment structure is an aging-related feature of the plant, the condition of

¹ Motion for Admission of Contention No. 5 on Shield Building Cracking (Jan. 10, 2012) ("Contention 5").

² Licensing Board Order (Denying Unopposed Motion for Leave to Respond to NRC Staff's Answer to Proposed Contention 5 and Setting Contention 5's Admissibility for Oral Argument) (Feb. 13, 2012) at 2 (unpublished) ("Order").

which precludes safe operation of the atomic reactor beyond 2017 for any period of time, let alone the proposed 20-year license period.³

FirstEnergy Nuclear Operating Company (FENOC) and NRC Staff filed answers to the motion on February 6, 2012.⁴ FENOC asserts that Contention 5 is inadmissible because it is untimely and it fails to satisfy the contention admissibility criteria of 10 C.F.R. § 2.309(f)(1).⁵ NRC Staff argues that Contention 5 was filed untimely, but that the Intervenor's have satisfied the requirements for the filing of an untimely contention, despite Intervenor's failure to make such an argument in their motion.⁶ NRC Staff also argues that Contention 5 is admissible in part, and proposes the following language for Contention 5:

Is the Structures [Aging Management Program] adequate to address any aging effects for the shield building that are related to the cracks identified by FENOC during the October 10, 2011 reactor head replacement and subject to a root cause evaluation to be provided by FENOC on February 28, 2012 such that the shield building would be unable to perform its intended functions of: 1) protecting the steel containment from environmental effects, including wind, tornado, and external missiles, 2) providing biological shielding, 3) providing controlled release to the annulus during an accident, and 4) providing a means for collection and filtration of fission product leakage from the Containment Vessel following a hypothetical accident?⁷

On February 9, 2012, FENOC filed an unopposed motion requesting leave from the Board to file a short response to the NRC Staff's Answer.⁸ The Intervenor's filed a reply on February 13,

³ Contention 5 at 11.

⁴ See FENOC's Answer Opposing Intervenor's Motion for Admission of Contention No. 5 on Shield Building Cracking (Feb. 6, 2012) [hereinafter "FENOC Answer"]; NRC Staff's Answer to Motion to Admit New Contention Regarding the Safety Implications of Newly Discovered Shield Building Cracking (Feb. 6, 2012) [hereinafter "NRC Staff Answer"].

⁵ FENOC Answer at 2.

⁶ NRC Staff Answer at 13-14.

⁷ Id. at 16.

⁸ FENOC's Unopposed Motion for Leave to Respond to the NRC Staff's Answer to Proposed Contention 5 on Shield Building Cracking (Feb. 9, 2012).

2012.⁹ That same day this Board issued an Order denying FENOC's motion for leave to respond to the NRC Staff and setting Contention 5 for oral argument.¹⁰

The oral argument will be held on Friday, May 18, 2012, in the Common Pleas Courtroom of the Ottawa County Courthouse, 315 Madison Street, in Port Clinton, Ohio. Argument will commence at 9:00 a.m. and will conclude no later than 4:30 p.m..

Only the duly authorized representatives or counsel for the Intervenors, FENOC, and the NRC Staff who have entered an appearance pursuant to 10 C.F.R. § 2.314(b) will be entitled to participate. The oral argument will proceed as follows. First, we will hear short opening statements, limited to ten minutes each, from the Intervenors, FENOC and the NRC Staff. Second, we will hear oral argument on the admissibility of Contention 5. Third, we will hear closing statements, limited to five minutes each, from each of the parties.

Counsel for the parties should be prepared to address the admissibility of Contention 5 as proposed by the Intervenors as well as the version of Contention 5 proposed by the NRC Staff. Should the parties reach an agreement on the form or admissibility of the contention prior to the scheduled oral argument, they are requested to inform the Board.

No witnesses, other representatives of the parties, or members of the public will be heard at this time. However, members of the public and representatives of the media are welcome to attend and observe this proceeding. This is an adjudicatory proceeding and the Board intends to conduct an orderly oral argument, focused solely on whether some form of Contention 5 should be admitted. Signs, banners, posters, and displays are prohibited in accordance with NRC policy.¹¹

⁹ Intervenors' Combined Reply in Support of Motion for Admission of Contention No. 5 (Feb. 13, 2012).

¹⁰ See Order at 2.

¹¹ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

All interested persons should arrive at least fifteen minutes early so as to allow sufficient time to pass through any security screening.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 28, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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FIRST ENERGY NUCLEAR OPERATING)
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE AND ORDER (Scheduling Oral Argument) have 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 28th day of March 2012