

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

April 17, 2012

ORDER

(Granting FENOC's Unopposed Motion for Leave to Supplement Its Answer)

On January 10, 2012, Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (Joint Intervenors) filed a motion with the Atomic Safety and Licensing Board (Board) to admit a newly-proposed Contention 5 (Contention 5) regarding shield building cracking.¹ Both FirstEnergy Nuclear Operating Company (FENOC) and the Nuclear Regulatory Commission Staff (NRC Staff) timely filed Answers to the proposed Contention 5.² An oral argument on the admission of Contention 5 is scheduled for May 18, 2012 in Port Clinton, Ohio.³

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

² NRC Staff's Answer to Motion to Admit New Contention Regarding the Safety Implications of Newly Discovered Shield Building Cracking (Feb. 6, 2012) (Staff Answer); FENOC's Answer Opposing Intervenors' Motion for Admission of Contention No. 5 on Shield Building Cracking (Feb. 6, 2012) (FENOC Answer).

³ See Board Notice and Order (Scheduling Oral Argument) (Mar. 28, 2012) at 3 (unpublished).

On April 5, 2012, FENOC notified the Board that it had submitted revisions to the Davis-Besse License Renewal Application (LRA).⁴ The LRA revisions included, among other things, a new aging management program (AMP) in Section B.2.43, "Shield Building Monitoring Program," to "ensure that the intended functions of the Shield Building are maintained during the period of extended operation."⁵ On April 16, 2012, FENOC filed a motion to supplement its Answer (FENOC Motion), alleging that this new AMP moots both (1) the proposed Contention's challenges to whether FENOC addressed aging management of Shield Building cracking, and (2) the revised contention of omission set forth by the NRC Staff in its Answer.⁶ FENOC states that because the new AMP was not available at the time it filed its Answer, this motion is timely under 10 C.F.R. § 2.323.⁷ FENOC alleges this supplement is necessary "to ensure that all material relevant information and arguments relative to admission of the proposed Contention are properly before the Board, and to prevent unnecessary litigation of the now-mooted issues."⁸

The FENOC Motion further states that counsel for FENOC certifies under 10 C.F.R. § 2.323(b) and Initial Scheduling Order Section G.1 that it consulted with the other parties and has made a sincere attempt to resolve the issues raised in this Motion.⁹ Counsel for the NRC Staff

⁴ Letter from T. Matthews, FENOC Counsel, to the Board, Notification of Filing Related to Proposed Shield Building Cracking Contention (Apr. 5, 2012).

⁵ Enclosure L-12-028, Amendment No. 25 to the DBNPS License Renewal Application, at 10 (Apr. 5, 2012) (appended to "Attachment L-12-028" of the Board Notification's Enclosure 1, Reply to Request for Additional Information for the Review of the Davis-Besse Nuclear Power Station, Unit No. 1, License Renewal Application (TAC No. ME4640) and License Renewal Application Amendment No. 25 (Apr. 5, 2012)).

⁶ FENOC's Unopposed Motion for Leave to Supplement Its Answer to the Proposed Shield Building Cracking Contention (Apr. 16, 2012).

⁷ Id. at 2. This motion was timely filed as it was submitted within 10 days of the occurrence or circumstance from which the motion arises. See Board Memorandum and Order (Denying Motion to Dismiss Contention 1) (Jan. 10, 2012) at 3-4 (unpublished); Board Order (Denying Motion for Leave to File a Motion for Reconsideration) (Jan. 30, 2012) at 3 (unpublished).

⁸ Id.

⁹ Id. at 2 n.7.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FIRST ENERGY NUCLEAR OPERATING)
COMPANY) Docket No. 50-346-LR
)
(Davis-Besse Nuclear Power Station, Unit 1))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Granting FENOC's Unopposed Motion for Leave to Supplement Its Answer) have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
Mail Stop O-7H4M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission.
Mail Stop T-3F23
Washington, DC 20555-0001

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Edward L. Williamson, Esq.
E-mail: edward.williamson@nrc.gov

William J. Froehlich, Chair
Administrative Judge
E-mail: william.froehlich@nrc.gov

Lloyd B. Subin, Esq.
E-mail: lloyd.subin@nrc.gov

Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

Brian Harris, Esq.
E-mail: brian.harris@nrc.gov
Catherine Kanatas, Esq.
E-mail: catherine.kanatas@nrc.gov

William E. Kastenber
Administrative Judge
E-mail: wek1@nrc.gov

Brian P. Newell, Paralegal
E-mail: brian.newell@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

Hillary Cain, Law Clerk
E-mail: hillary.cain@nrc.gov
Matthew Flyntz, Law Clerk
E-mail: matthew.flyntz@nrc.gov

FirstEnergy Service Company.
Mailstop: A-GO-15
76 South Main Street
Akron, OH 44308
David W. Jenkins, Esq.
E-mail : djenkins@firstenergycorp.com

Docket No. 50-346-LR
ORDER (Granting FENOC's Unopposed Motion for Leave to Supplement Its Answer)

Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Stephen Burdick, Esq.
E-mail: sburdick@morganlewis.com
Alex Polonsky, Esq.
E-mail: apolonsky@morganlewis.com
Kathryn M. Sutton, Esq.
E-mail: ksutton@morganlewis.com
Martin O'Neill, Esq.
E-mail: martin.oneill@morganlewis.com
Timothy Matthews, Esq.
E-mail: tmatthews@morganlewis.com
Brooke Leach, Esq.
E-mail: bleach@morganlewis.com
Jane Diecker, Esq.
E-mail: jdiecker@morganlewis.com
Mary Freeze, Legal Secretary
E-mail: mfreeze@morganlewis.com

Citizens Environmental Alliance (CEA)
of Southwestern Ontario
1950 Ottawa Street
Windsor, Ontario Canada N8Y 197

Green Party of Ohio
2626 Robinwood Avenue
Toledo, Ohio 43610

Don't Waste Michigan
811 Harrison Street
Monroe, Michigan 48161
Michael Keegan
E-mail: mkeeganj@comcast.net

Terry J. Lodge, Counsel for CEA, Don't
Waste Michigan, and Green Party of Ohio
316 N. Michigan Street, Suite 520
Toledo, OH 43604-5627
E-mail: tjlodge50@yahoo.com

Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, Md. 20912
Kevin Kamps
E-mail : kevin@beyondnuclear.org
Paul Gunter
E-mail : paul@beyondnuclear.org

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

Dated at Rockville, Maryland
this 17th day of April 2012