

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³ See Board Notice and Order (Scheduling Oral Argument) (Mar. 28, 2012) at 3 (unpublished).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

indicated that the NRC Staff does not oppose FENOC's Motion.¹⁰ Similarly, counsel for Joint Intervenor indicated that Joint Intervenor does not oppose FENOC's request to supplement its Answer and reserve the opportunity to file a reply.¹¹

To ensure the orderly and effective conduct of this proceeding and for good cause shown, we grant FENOC's unopposed April 16, 2012 motion for leave to supplement its Answer to the proposed shield building cracking contentions.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

 /RA/
William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 17, 2012

¹⁰ Id.

¹¹ Id.

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)	

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.

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

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