

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

August 8, 2012

ORDER

(Suspending Procedural Date Related to Proposed Waste Confidence Contention)

On July 9, 2012, the Intervenor in this proceeding filed a Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station.<sup>1</sup> The Motion raised a new contention alleging that FirstEnergy Nuclear Operating Company's (FENOC) Environmental Report is inadequate under the National Environmental Policy Act (NEPA) for failure to discuss the environmental impacts of spent fuel pool leakage, spent fuel pool fires, and the lack of a spent fuel repository. The contention is largely based on the June 8, 2012, decision of the United States Court of Appeals for the District of Columbia Circuit in State of New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012). The NRC Staff and FENOC filed Answers to the motion on August 2, 2012 and August 3, 2012 respectively.<sup>2</sup>

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<sup>1</sup> Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste (July 9, 2012).

<sup>2</sup> See NRC Staff's Answer to Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station (Aug. 2, 2012); FENOC's Answer Opposing New Contention Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station (Aug. 3, 2012).

Intervenors' replies to these answers are currently due on August 9, 2012 and August 10, 2012 respectively.<sup>3</sup>

On August 7, 2012, however, the Commission issued CLI-12-16, which addressed many of the issues concerning temporary storage and ultimate disposal of nuclear waste raised by the intervenors in this docket.<sup>4</sup> The Commission, citing this proceeding<sup>5</sup> and numerous other proceedings where similar contentions were filed, exercised its inherent supervisory authority over adjudications, and directed that these contentions—and any related contentions that may be filed in the near term—be held in abeyance pending further Commission order.<sup>6</sup>

Given the Commission's direction in CLI-12-16 that the proceedings before the boards be held in abeyance, the August 9, 2012 and August 10, 2012 deadlines for any replies are suspended.<sup>7</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 8, 2012

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<sup>3</sup> See Initial Scheduling Order (June 15, 2011) at 13 (unpublished).

<sup>4</sup> See Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC \_\_ (slip op.) (Aug. 7, 2012).

<sup>5</sup> See id. at 5 n.10.

<sup>6</sup> Id. at 6.

<sup>7</sup> We note, however, that should the Commission send the waste confidence issue to the Board for decision, intervenors will be given an opportunity to file its reply. See id. at 5 ("To the extent that the NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in our adjudicatory process.").

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NUCLEAR REGULATORY COMMISSION

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FIRST ENERGY NUCLEAR OPERATING )  
COMPANY ) Docket No. 50-346-LR  
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(Davis-Besse Nuclear Power Station, Unit 1) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Suspending Procedural Date Related to Proposed Waste Confidence Contention)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk\*.

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

William J. Froehlich, Chair  
Administrative Judge  
E-mail: [william.froehlich@nrc.gov](mailto:william.froehlich@nrc.gov)

Lloyd B. Subin, Esq.  
E-mail: [lloyd.subin@nrc.gov](mailto:lloyd.subin@nrc.gov)

Nicholas G. Trikouros  
Administrative Judge  
E-mail: [nicholas.trikouros@nrc.gov](mailto:nicholas.trikouros@nrc.gov)

Brian Harris, Esq.  
E-mail: [brian.harris@nrc.gov](mailto:brian.harris@nrc.gov)  
Catherine Kanatas, Esq.  
E-mail: [catherine.kanatas@nrc.gov](mailto:catherine.kanatas@nrc.gov)

William E. Kastenberg  
Administrative Judge  
E-mail: [wek1@nrc.gov](mailto:wek1@nrc.gov)

Brian P. Newell, Paralegal  
E-mail: [brian.newell@nrc.gov](mailto:brian.newell@nrc.gov)

OGC Mail Center : [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)

Hillary Cain, Law Clerk  
E-mail: [hillary.cain@nrc.gov](mailto:hillary.cain@nrc.gov)  
Matthew Flyntz, Law Clerk  
E-mail: [matthew.flyntz@nrc.gov](mailto: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](mailto:djenkins@firstenergycorp.com)

Docket No. 50-346-LR

**ORDER (Suspending Procedural Date Related to Proposed Waste Confidence Contention)**

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

Erich Pica, President\*  
Friends of the Earth  
1100 15<sup>th</sup> Street, NW  
11<sup>th</sup> Floor  
Washington, D.C. 20555  
E-mail: [mkeever@foe.org](mailto:mkeever@foe.org)

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](mailto: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](mailto:tjlodge50@yahoo.com)

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

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

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of August 2012