

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board**

In the Matter of)	Docket No. 50-346-LR
<i>First Energy Nuclear Operating Company</i>)	
(Davis-Besse Nuclear Power Station, Unit 1))	October 30, 2012
)	

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***MOTION TO FILE ‘INTERVENORS’ MOTION FOR RECONSIDERATION
OF ASLB ORDER GRANTING FENOC’S
MOTION TO STRIKE’ NUNC PRO TUNC***

Now come Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario (CEA), Don’t Waste Michigan, and the Green Party of Ohio (collectively, “Intervenors”), by and through counsel, and move the Atomic Safety and Licensing Board to allow them to file the attached “Intervenors’ Motion for Reconsideration of ASLB Order Granting FENOC’s Motion to Strike Intervenors’ Reply in Opposition to ‘FirstEnergy’s Motion for Summary Disposition of Contention 4 (SAMA Analysis - Source Terms)” *nunc pro tunc*.

/s/ Terry J. Lodge
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MEMORANDUM IN SUPPORT

On October 22, 2012, Intervenors timely attempted to file “Intervenors’ Motion for Reconsideration of ASLB Order Granting FENOC’s Motion to Strike Intervenors’ Reply in Opposition to ‘FirstEnergy’s Motion for Summary Disposition of Contention 4 (SAMA Analysis

- Source Terms)” (hereinafter “Motion for Reconsideration”) with the NRC’s EIE system, but could not for the reason, they later learned, that certain JAVA settings were wrongly set. Shortly before the midnight, October 22, deadline, Intervenors sent copies of their Motion to the ASLB and parties, indicating that they were experiencing technical difficulty.

Intervenors have since cleared up the digital filing problem and proffer their request for reconsideration as attached to this Motion.

Contention 4 involving the Severe Accident Mitigation Analysis (SAMA) for the Davis-Besse Nuclear Power Station will be addressed at oral argument on November 5 and 6, 2012.

Neither FirstEnergy nor the NRC Staff will be prejudiced by the granting of this *nunc pro tunc* motion by the ASLB.

WHEREFORE, Intervenors pray the Atomic Safety and Licensing Board accept their Motion for Reconsideration for filing in the EIE system forthwith.

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CERTIFICATE OF SERVICE

We hereby certify that a copy of the “MOTION TO FILE ‘INTERVENORS’ MOTION FOR RECONSIDERATION OF ASLB ORDER GRANTING FENOC’S MOTION TO STRIKE *NUNC PRO TUNC*” was sent by me to the following persons via electronic deposit filing with the Commission’s EIE system on the 30th day of October, 2012:

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Respectfully submitted,

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***INTERVENORS' MOTION FOR RECONSIDERATION
OF ASLB ORDER GRANTING FENOC'S
MOTION TO STRIKE 'INTERVENORS' REPLY IN OPPOSITION TO
FIRSTENERGY'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION 4
(SAMA ANALYSIS – SOURCE TERMS)'***

Now come Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario (CEA), Don't Waste Michigan, and the Green Party of Ohio (collectively, "Intervenors"), by and through counsel, and move the Atomic Safety and Licensing Board to reconsider its October 11, 2012 "Order (Granting Motion to Strike)," ASLBP No. 11-907-01-LR-BD01, by which the ASLB granted "FENOC's Motion to Strike Intervenors' Reply in Opposition to 'FirstEnergy's Motion for Summary Disposition of Contention 4 (SAMA Analysis - Source Terms).'" In entering its October 11 decision, the ASLB made a clear and material error which could not have been reasonably anticipated and which renders the decision invalid.

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MEMORANDUM IN SUPPORT

In its October 11, 2012 Order, the ASLB found (p. 6) that “Contention 4, as limited by this Board and the Commission, challenges only the MAAP code generated source terms used by FENOC in performing its SAMA analysis.” This was then used as the basis upon which the Board excluded the entirety of Intervenor’s opposition to summary disposition of Contention 4 as “irrelevant.”

But Intervenor in their summary disposition opposition did, indeed, challenge the MAAP code-generated source terms used by FENOC. In ¶ 47 of its Statement of Material Facts, FENOC asserts the MAAP4 program has been benchmarked against Three Mile Island and other severe accident studies. Intervenor pointed out in their opposition to summary disposition (and in their response to the Motion to Strike at p. 5) that the scenarios of a fatally-cracked and compromised shield building and corroded containment shell were not addressed in the course of that benchmarking. At ¶ 49 of its Statement of Material Facts, FENOC asserts that “If inputs and assumptions are appropriate for the computer model, and sources of uncertainty are understood, then the results of that code may be accepted by a reviewer or regulator for purposes of the application.” In response, Intervenor contended on summary disposition (and in their response to the Motion to Strike at p. 6) that the inputs and assumptions for the Davis-Besse SAMA are inappropriate, leaving the sources of uncertainty to be poorly understood. At ¶¶ 53 and 54 of the Statement of Material Facts, FirstEnergy distinguishes between the source terms describing radioactivity which is contained, from those terms describing radiation leakage into the outer environment. But those terms did not encompass a cracked and compromised shield building nor a corroded steel containment, the true state of the passive containment systems at Davis-Besse.

Aspirationally, FENOC’s experts opined in support of summary disposition that the

methodology used to develop source terms for a SAMA analysis must account for plant-unique conditions, plant design, support system dependencies, plant maintenance and operating procedures, operator training, and the interdependencies among these factors that can influence the core damage frequency (CDF) estimate for a specific plant,¹ But key plant-unique facts were omitted from the methodology used to develop source terms. This created a “garbage-in, garbage-out” scenario in Davis-Besse’s MAAP source term output. The MAAP code could only produce results as good as the factual assumptions underlying it.

The assumed facts for MAAP calculation underestimated the true cost of a severe accident at Davis-Besse. They prompted grossly underestimated radionuclide fractions which would be released in the event of a shield building failure which did not incorporate the passive equipment failures of the shield building and the steel containment shell which were predicted by NRC staff engineers. Contrary to the ASLB’s holding, the Intervenors did “challenge . . . the MAAP code generated source terms used by FENOC in performing its SAMA analysis.” Intervenors challenged the “input data” inserted into the MAAP program from which source terms were derived. The Commission held in the Pilgrim case that where there is no “distinction between specific *input* data entered into the MACCS2 code and specific *models* embedded in the code (such as the atmospheric dispersion model), . . . there easily may be an overlap between arguments challenging the sufficiency of ‘input data’ used and challenging the model used, if the model does not require, allow for, or otherwise take into account particular types of data.”

(Emphasis in original). *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-

¹“Joint Declaration of Kevin O’Kula and Grant Teagarden in Support of FirstEnergy’s Motion for Summary Disposition of Intevenors’ Contention 4 (SAMA Analysis Source Terms)” (O’Kula/Teagarden Decl.,” Attachment 2 to FENOC’s MSD) ¶ 49.

10-11, 14-15, 71 NRC 287, 309 (2010).

Intervenors challenged the sufficiency of input data used in the MAAP model since that model did not account for the shield building cracking and containment structure corrosion. FENOC extensively discussed the genesis and preferred content requirements of its MAAP data; Intervenors then responded by properly critiquing FENOC's lack of faithfulness to its ostensible standard, meeting FENOC's admirable avidity with the gritty facts at the plant. Accordingly, the facts and arguments raised by Intervenors in opposition to summary disposition of Contention No. 4 should not have been stricken. They should now be fully considered and in the Board's forthcoming decision on FENOC's motion.

Conclusion

A properly supported motion for reconsideration must identify errors or deficiencies in the presiding officer's determination indicating the questioned ruling overlooked or misapprehended some legal principle or decision that should have controlling effect. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340, 342 (2000).

WHEREFORE, Intervenors pray the Atomic Safety and Licensing Board reconsider its October 11, 2012 Order and upon reconsideration, that it reverse that Order and restore Intervenors' facts and arguments to the record for inclusion in deliberations over the dispositional ruling.

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