

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
FIRSTENERGY NUCLEAR OPERATING)	Docket No. 50-346-LA
COMPANY)	
(Davis-Besse Nuclear Power Station, Unit 1))	July 11, 2013
)	

**FIRSTENERGY NUCLEAR OPERATING COMPANY’S ANSWER SUPPORTING THE
NRC STAFF’S MOTION TO STRIKE PORTIONS OF PETITIONERS’ REPLY**

In accordance with 10 C.F.R. § 2.323(c), FirstEnergy Nuclear Operating Company (“FENOC”) files this Answer supporting the Nuclear Regulatory Commission (“NRC”) Staff’s July 1, 2013 “Motion to Strike Portions of Joint Petitioners Reply or, in the Alternative, for Leave to Reply” (“Staff Motion”). The Staff Motion requested that the Atomic Safety and Licensing Board (“Board”) strike portions of “Petitioners’ Reply in Support of ‘Petition to Intervene and for an Adjudicatory Public Hearing of FENOC License Amendment Request’”¹ (“Reply”), dated June 21, 2013, for raising new arguments not within the scope of the Petitioner’s May 20, 2013 “Petition to Intervene and for an Adjudicatory Public Hearing of FENOC License Amendment Request” (“Petition”) and that do not satisfy the late-filing requirements in 10 C.F.R. § 2.309(c).² Alternatively, the Staff moved for leave to respond to the new arguments, and provided its response in the Staff Motion.³

¹ The Petitioners are Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don’t Waste Michigan, and the Ohio Sierra Club.

² Staff Motion at 1.

³ *Id.* at 1, 10-12.

FENOC supports the Staff's request to strike portions of the Reply. The Staff Motion is generally consistent with FENOC's June 28, 2013 "Motion to Strike Portions of Petitioners' Reply" ("FENOC Motion"). The FENOC Motion identifies a few additional parts of the Reply to be stricken that are not identified in the Staff Motion (*i.e.*, Reply footnote 2, the first paragraph of Reply Section I.C, and Reply Section III).⁴ FENOC concludes that those parts also should be stricken for the reasons provided in the FENOC Motion.

FENOC also supports the Staff's request for leave to respond to the new arguments in the Reply.⁵ In particular, the Staff demonstrates that the new arguments raised by Petitioners do not support their standing or the admissibility of their single proposed contention in this proceeding.⁶ FENOC agrees with the Staff's arguments. Other arguments not raised by the Staff also support rejecting the new arguments raised by Petitioners in their Reply. As FENOC requested in the FENOC Motion, "if the Board decides to consider the new arguments and references contained in the Reply, then FENOC requests an opportunity to respond to the new information in writing or during the oral argument."⁷

For the foregoing reasons, FENOC supports the Staff Motion and the Board should strike the new arguments impermissibly provided in Petitioners' Reply, or should reject those arguments for the substantive reasons provided by the Staff.⁸

⁴ See FENOC Motion at 5-7.

⁵ See Staff Motion at 10-12.

⁶ See *id.*

⁷ FENOC Motion at 2.

⁸ FENOC also would like to clarify one statement in the Staff Motion. The Staff stated: "FENOC indicates that the separate plant design change resulting from the removal of the original SGs and the installation of the replacement SGs is being pursued under 10 C.F.R. § 50.59 without the need for prior NRC approval." Staff Motion at 2. While the Staff is correct that the replacement of the Davis-Besse steam generators is being performed as a design modification in accordance with the provisions of 10 C.F.R. § 50.59, and approval of the modification was not requested as part of the January 18, 2013 License Amendment Request, FENOC has not completed its entire 50.59 review to determine if any further NRC approval is needed. As explained in FENOC's answer to the Petition, "FENOC does not anticipate that any additional license amendments will be needed, but the 50.59 review cannot be completed until the analyses and manufacturing of the replacement

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, DC
this 11th day of July 2013

steam generators are complete. If the 50.59 review process determines that an additional license amendment is necessary for the replacement of the steam generators, FENOC will seek one at that time . . .” FirstEnergy Nuclear Operating Company’s Answer Opposing Petition to Intervene and Request for Hearing Regarding Technical Specification License Amendment Request at 23 (June 14, 2013).

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “FirstEnergy Nuclear Operating Company’s Answer Supporting the NRC Staff’s Motion to Strike Portions of Petitioners’ Reply” was filed through the E-Filing system.

Signed (electronically) by Stephen J. Burdick

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