

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. Kastenber

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

July 25, 2014

MEMORANDUM AND ORDER

(Denying Intervenors' Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems)

Before this Board is a motion from Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (collectively, Intervenors) seeking admission of a newly proposed contention regarding recent structural problems discovered in the shield building at the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse).¹

Intervenors' motion was filed on April 22, 2014 and is opposed by the applicant, FirstEnergy Nuclear Operating Company (FENOC),² and the NRC Staff.³ Intervenors filed a

¹ Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems (April 21, 2014) [hereinafter Contention 6 Motion]. In support of their motion, Intervenors submitted eight attachments. See Contention 6 Motion.

² FENOC's Answer Opposing Intervenors' Motion for Admission of Contention No. 6 (May 16, 2014) [hereinafter FENOC's Answer].

³ NRC Staff's Answer to Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems (May 16, 2014) [hereinafter NRC Staff's Answer].

reply to FENOC and the NRC Staff on May 23, 2014.⁴

For the reasons discussed below, Intervenors' motion to admit Contention 6 is DENIED.

I. PROCEDURAL BACKGROUND

The underlying proceeding in this docket concerns FENOC's August 27, 2010 application to renew the operating license for its Davis-Besse Nuclear Power Station, Unit 1 for an additional twenty years.⁵ Intervenors initially petitioned to intervene on December 27, 2010, proposing four contentions.⁶ The Board admitted Contention 1 (dealing with renewable energy alternatives) and Contention 4 (dealing with severe accident mitigation alternatives).⁷ FENOC appealed the Board's ruling and the Commission reversed the Board's admission of Contention 1 and reversed, in part, the Board's admission of Contention 4.⁸ FENOC subsequently moved for and the Board granted, summary disposition of Contention 4.⁹

On January 10, 2012, Intervenors moved to admit proposed Contention 5 concerning concrete cracking at the Davis-Besse shield building.¹⁰ During 2012, Intervenors submitted five

⁴ Reply in Support of Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems (May 23, 2014) [hereinafter Reply].

⁵ [FENOC's] License Renewal Application is available on the NRC's public website at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/davis-besse/davis-besse-lra.pdf>

⁶ See Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio Request for Public Hearing and Petition for Leave to Intervene (Dec. 27, 2010).

⁷ See LBP-11-13, 73 NRC 534, 588–89 (2011).

⁸ See CLI-12-8, 75 NRC 393 (2012).

⁹ See [FENOC's] Motion for Summary Disposition of Contention 4 (SAMA Analysis Source Terms) (July 26, 2012).

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

additional motions to amend and/or supplement Contention 5.¹¹ Contention 5 was based on shield building cracks identified in October 2011 during a scheduled reactor head replacement. In general, Contention 5 alleged that the 2011 shield building cracking raised both safety and environmental concerns and that FENOC's License Renewal Application (LRA) was inadequate for failing to discuss how the aging effect of these cracks would be managed.

The Board held oral argument on November 5 and 6, 2012, in Toledo, Ohio, on the admissibility of proposed Contention 5 and the five motions to supplement or amend, in addition to other matters.¹² On December 28, 2012, the Board denied Intervenors' motion to admit proposed Contention 5 and the five subsequent motions to supplement or amend Contention 5.¹³

II. SUMMARY OF CONTENTION 6

Intervenors' motion indicates that Contention 6 is based upon additional shield building cracking discovered in August and September of 2013 and upon the discovery of concrete voids and rebar cracking in February 2014.¹⁴ Intervenors state that "in September 2013, additional concrete cracking which had not hitherto been identified was discovered in the shield building."¹⁵ Intervenors' motion quotes from a September 20, 2013, Preliminary Notification of Event or Occurrence (PNO):

¹¹ See Intervenors' Motion to Amend 'Motion for Admission of Contention No. 5' (Feb. 27, 2012); Intervenors' Motion to Amend and Supplement Proposed Contention No. 5 (Shield Building Cracking) (June 4, 2012); Intervenors' Third Motion to Amend and/or Supplement Proposed Contention No. 5 (Shield Building Cracking) (July 16, 2012); Intervenors' Motion to Amend and Supplement Proposed Contention No. 5 (Shield Building Cracking) (July 23, 2012); Intervenors' Fifth Motion To Amend and/or Supplement Proposed Contention No. 5 (Shield Building Cracking) (Aug. 16, 2012).

¹² See Notice and Order (Scheduling Oral Argument) (Sept. 20, 2012) (unpublished); see also Tr. at 275–712. The Board dedicated November 5 to argument on Contention 4. See Tr. at 288–425.

¹³ See LBP-12-27, 76 NRC 583 (2012).

¹⁴ See Contention 6 Motion at 1–2, 6.

¹⁵ Id. at 6.

On August 26, 2013, the licensee was performing examinations of core bores in the shield building in accordance with the commitments First Energy Nuclear Operating Company (FENOC) made to the NRC. The commitment is for long term monitoring of the shield building which was documented in the NRC's Confirmatory Action Letter dated December 2, 2011 (ADAMS ML11336A355). The examinations performed in 2011 and 2012 showed no additional cracks. This year [2013], using new instrumentation with enhanced capabilities, plant workers identified a crack that had not been seen before. To date, the core bore examinations revealed seven previously unidentified cracks. FENOC has taken steps to reevaluate 43 core bores and will be looking at the remaining 39 going forward.¹⁶

The Intervenors also state that, “[o]n or about February 13, 2014, FENOC discovered an extensive air pocket or void of concrete in the Davis-Besse shield building's inner wall.”¹⁷ The Intervenors' motion quotes from another PNO which first appeared in the NRC's public-access ADAMS library on February 19, 2014 stating:

On 02/14/2014, an unfilled area was discovered in the concrete along the top of the shield building construction opening on the annulus side. The condition was discovered during the current steam generator replacement outage, and is likely due to not completely repouring the shield building wall opening in 2011. Analysis shows this condition is bounded by previous calculations that demonstrate the containment function is maintained such that the protection of the health and safety of the public was not in question. Further analysis is planned to reconfirm previous calculations. The NRC Resident Inspector has been notified.¹⁸

The Intervenors also rely upon an article published in the Toledo Blade on February 15, 2014 entitled, “Davis-Besse Had Air Gap in Shield Building,”¹⁹ and statements made by an NRC staff member on March 25, 2014 at an NRC-sponsored public comment session about the Davis-Besse Draft Supplement Environmental Impact Statement.²⁰

On April 21, 2014, Intervenors submitted the instant motion for admission of Contention

¹⁶ Id. (citing Ex. 6, Preliminary Notice of Event or Occurrence at 6 (Sept. 20, 2013)) (emphasis in original).

¹⁷ Id. at 3.

¹⁸ Id. (citing Ex. 1, Preliminary Notice of Event or Occurrence (Feb. 19, 2014)).

¹⁹ See id., Ex. 2, Tom Henry, *Davis-Besse had Air Gap in Shield Building: FirstEnergy Found Flaw while Replacing 2 Steam Generators*, THE BLADE (Toledo, Ohio) (Feb. 15, 2014).

²⁰ See Contention 6 Motion at 4 (citing Ex. 3, Declaration of Victoria Clemons (Apr. 14, 2014)) [hereinafter Clemons Declaration].

6.²¹ Intervenor's proposed Contention 6 makes both safety and environmental claims.

Specifically, Intervenor's Contention 6 alleges:

The improper concrete pour in 2011, discovered in the form of a 25' long void, or air space in the reconstructed area of the Davis-Besse shield building where a 2011 maintenance access had been hydrologically cut is at least the second known concrete void at the plant. This "honeycombing" problem is complicated by the contemporaneous February 2014 discovery of broken and damaged rebar in the vicinity of the void. These shield building reconstruction problems coincide with the identification of continued and expanding concrete laminar and other cracking within the walls of the plant's shield building, which was verified by a FENOC investigation during August/September 2013. These problems represent ongoing aging problems compounded and intertwined with management failures; they are unmentioned and undocumented within the DSEIS for Davis-Besse; they may be interrelated or synergistic; they each are precedented at Davis-Besse; and they must be more intensely subjected to Aging Management Plans (AMPs) than has heretofore happened. The Draft and Final SEIS documents must be reconfigured in recognition of the lax management and QA failings, and the failings of the physical components of the shield building so that the true nature of these historic problems can be revealed and analyzed in the NEPA documents and in the severe accident mitigation alternatives analysis (SAMA). Relevant AMPs must be redrawn to anticipate and account for the implications or insufficient and irregular aging management of the shield building. Also, the Safety Evaluation review and overall SE Report must be rewritten to articulate modified AMPs and QA procedures which will reasonably assure that the plant can operate safely between now and April 22, 2017, and during the extended operating license period from 2017 until 2037.²²

III. LEGAL STANDARDS

a. General Requirements for Contentions

Contentions must meet the admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1). This section requires each contention to: (1) provide a specific statement of the issue of law or fact to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised in the contention is within the scope of the proceeding; (4) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the licensing action; (5) provide a concise statement of the alleged facts or expert opinions in support of the petitioner's position on the issue and on which the petitioner intends to rely at hearing; and (6) provide sufficient information to show that a genuine dispute exists with the

²¹ See generally id.

²² Id. at 25–26.

applicant/licensee on a material issue of law or fact, with reference to specific disputed portions of the application.²³ A failure to meet any of these criteria renders the contention inadmissible.

b. Additional Requirements for New and Amended Contentions

Once the deadline for filing petitions to intervene has passed, in this proceeding the initial filing deadline was December 27, 2010,²⁴ a party may file new or amended contentions based on material information that has subsequently become available.

Under the Board's Initial Scheduling Order, to file an admissible contention the Intervenor must show that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.²⁵

In this case, a new or amended contention is considered timely if it is filed within sixty (60) days of the date when the material information first becomes available to the moving party through service, publication, or any other means.²⁶

IV. PARTIES' POSITIONS

Intervenor's motion to admit Contention 6 is based on the recent shield building

²³ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

²⁴ Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing for Facility Operating License No. NPF-003 for an Additional 20-Year Period; FirstEnergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1, 75 Fed. Reg. 65,528, 65,529 (Oct. 25, 2010).

²⁵ 10 C.F.R. § 2.309(f)(2)(i)-(iii) (2012).

²⁶ Licensing Board Order (Initial Scheduling Order) at 12 (June 15, 2011) (unpublished) [hereinafter ISO].

cracking, concrete void, and broken rebar problems at Davis-Besse.²⁷ Intervenor assert that a “deep and concerning history of quality assurance (“QA”) failures at Davis-Besse have elevated QA to an aging management problem at the plant” and “that it is not reasonable to assume that cracks are strictly a current management problem, but are likely to increase and recur throughout the 20-year license renewal period.”²⁸ Specifically, Intervenor move for admission of Contention 6 “in order to determine the adequacy of, and if need be, to challenge the sufficiency of modifications to the Shield Building Monitoring Program and the Structures Monitoring Program Aging Management Plans (“AMPS”) credited for the shield building in the Davis-Besse (“LRA”).”²⁹ Additionally, Intervenor “seek to litigate the adequacy of FENOC’s anticipated modifications to Davis-Besse’s Shield Building Monitoring Program and the Structures Monitoring Program AMPs.”³⁰

FENOC responds that the Board should deny Contention 6 on a several grounds. First, it asserts that Contention 6 raises arguments that were the subject of Intervenor’s earlier proposed Contention 5 and the five supplements. FENOC likens Contention 6 to a motion for reconsideration of the dismissal of Contention 5.³¹ Second, FENOC contends that Contention 6 does not satisfy the NRC’s contention admissibility requirements under 10 C.F.R. § 2.309(f)(1) because the proposed contention challenges issues outside the scope of license renewal, fails to challenge the Davis-Besse License Renewal Application or the Draft Supplemental Environmental Impact Statement, lacks adequate factual support, and raises issues not material

²⁷ See Contention 6 Motion at 1–2.

²⁸ Id. at 2.

²⁹ Id.

³⁰ Id.

³¹ See FENOC’s Answer at 17–18.

to the findings the NRC Staff must make to issue the requested renewal license.³² Finally, FENOC asserts that Contention 6 does not satisfy the relevant timeliness requirements.³³

The NRC Staff also argues that Contention 6 should be denied for multiple reasons. The NRC Staff asserts that the motion is untimely as a request for reconsideration of LBP-12-27 to the extent the motion attempts to relitigate Contention 5.³⁴ Second, the NRC Staff contends that the proposed contention does not meet the standards in 10 C.F.R. § 2.309(f)(1)³⁵ and 10 C.F.R. § 2.309(f)(2).³⁶

In their Reply, Intervenors assert that they are not seeking reconsideration of the denial of Contention 5.³⁷ Intervenors contend the instant motion is timely³⁸ and is based on new information. They state that the motion simply recounts the history of the shield building cracking at Davis-Besse.³⁹ Intervenors also argue that the proposed contention ties the shield building cracking to a specific environmental impact because the “connection between the shield building failure on a catastrophic level, and the environment should be obvious on its face.”⁴⁰

³² See id. at 19–37.

³³ See id. at 41–50.

³⁴ See NRC Staff’s Answer at 20–25.

³⁵ See id. at 36–52.

³⁶ See id. at 26–32.

³⁷ See Reply at 1–3.

³⁸ See id. at 11–12.

³⁹ See id. at 1, 3–8.

⁴⁰ Id. at 8.

V. ANALYSIS AND RULING

Contention 6 must be denied because it does not meet the Commission's standards for a new or amended contention and in some respects it may be viewed as premature. Failure to comply with any of section 2.309(f)(1) is grounds for not admitting a contention.⁴¹

Proposed Contention 6 is inadmissible because (1) it addresses issues that are not within the scope of the license renewal proceeding in violation of section 2.309(f)(1)(iii); (2) it lacks adequate support as required by section 2.309(f)(1)(v); (3) it does not raise a genuine dispute with Davis-Besse's License Renewal Application as required by section 2.309(f)(1)(vi); and (4) it does not raise a material issue as required by section 2.309(f)(1)(iv).

a. Contention 6 is Not Within the Scope of a License Renewal Proceeding

As the Board explained in LBP-12-27,⁴² NRC regulations limit the scope of a license renewal proceeding to specific matters that must be considered for the license renewal application to be granted.⁴³ All contentions must be within the scope of the proceeding as defined by the Commission in the initial Notice and Order referring the proceeding to the Licensing Board.⁴⁴ Any contention that falls outside the specified scope of the proceeding must be rejected.⁴⁵

⁴¹ LBP-12-27, 76 NRC at 592 (citing South Carolina Elec. & Gas Co. (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 & n.33 (2010)).

⁴² See id. at 594.

⁴³ See Final Rule: "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461 (May 8, 1995); Final Rule: "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943 (Dec. 13, 1991).

⁴⁴ See 10 C.F.R. § 2.309(f)(1)(iii); Florida Power & Light Co. (Turkey Point Nuclear Generating Plants, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985).

⁴⁵ See Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-36 (2011).

In Contention 6, as was the case with Contention 5,⁴⁶ Intervenor raise concerns that are outside the scope of the license renewal application pending before the Licensing Board. For instance, Intervenor challenge the Commission's generic determinations in 10 C.F.R. Part 51 Subpart A, Appendix B that the environmental impacts of postulated accidents are small, by contending that the poor quality assurance management of the structural integrity of the shield building should negate the generic finding in this license renewal case.⁴⁷ Specifically, Intervenor assert that the cracking issues with the shield building "represent ongoing aging problems compounded and intertwined with management failures. . . . The Draft and Final SEIS documents must be reconfigured in recognition of the lax management and [Quality Assurance] failings. . . ." ⁴⁸ Additionally, Contention 6 raises "safety culture" claims, such as references to the corrosion of Davis-Besse's reactor lid in 2002.⁴⁹

As we stated in LBP-12-27, the Commission has held that issues such as management competence, quality assurance, and "safety culture" concerns are outside the scope of license renewal proceedings.⁵⁰ Thus, the parts of Contention 6 that are not within the scope of the license renewal proceeding are inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).

b. Contention 6 Lacks Adequate Support

As the Board explained in LBP-12-27,⁵¹ to trigger an adjudicatory hearing, petitioners

⁴⁶ See LBP-12-27, 76 NRC at 611.

⁴⁷ See, e.g., Contention 6 Motion at 20.

⁴⁸ Id. at 26.

⁴⁹ See, e.g., id. at 27, 31.

⁵⁰ See, e.g., LBP-12-27, 76 NRC at 611 (citing Northern States Power Co. (Prairie Island Nuclear Generating Plants, Units 1 and 2, CLI-10-27, 72 NRC 481, 491 (stating that "broad-based issues akin to safety culture -- such as operational history, quality assurance, quality control, management competence, and human factors -- [are] beyond the bounds of a license renewal proceeding"))).

⁵¹ Id. at 595.

must be able to “proffer at least some minimal factual and legal foundation in support of their contentions.”⁵² It is the petitioner’s obligation to present factual allegations and/or expert opinion necessary to support its contention.⁵³ While a board may appropriately view a petitioner’s supporting information in a light favorable to the petitioner, failure to provide such information regarding a proffered contention requires that the contention be rejected.⁵⁴ Neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention.⁵⁵ If a petitioner neglects to provide the requisite support for its contentions, it is not within the board’s power to make assumptions or draw inferences that favor the petitioner, nor may the board supply information that is lacking.⁵⁶ Likewise, simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information’s significance, is inadequate to support the admission of the contention.⁵⁷

While it is clear that Intervenors are concerned about the structural problems of the shield building, the instant contention is inadmissible under section 2.309(f)(1)(v) because it is based upon unsupported assertions, conclusions, and speculation. For example, Intervenors assert that “[t]he recurring concrete void problem, cracking problem and rebar problem have or may compromise important structures and safety features at the plant and have not been

⁵² Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999).

⁵³ See 10 C.F.R. § 2.309(f)(1)(v); USEC, Inc. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006).

⁵⁴ See Arizona Pub. Serv. Co. (Palo Verde Nuclear Stations, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

⁵⁵ See American Centrifuge Plant, CLI-06-10, 63 NRC at 472; Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

⁵⁶ See Crow Butte Resources, Inc. (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553 (2009); Palo Verde, CLI-91-12, 34 NRC at 155.

⁵⁷ See Fansteel, CLI-03-13, 58 NRC at 204–05.

properly disclosed to the public under NEPA” and that the cracking has not been accounted for in the Safety Evaluation Report (SER) nor the Severe Accident Mitigation Analysis (SAMA).⁵⁸ However, as the Staff points out,⁵⁹ Intervenor do not explain why, using facts or expert opinion, the shield building cracks, concrete void, or broken rebar impacts the shield building’s ability to perform its intended safety functions or how these issues reflect “age-related degradation” of the shield building.⁶⁰

Intervenor have submitted eight attachments with their motion, including a report from Arnold Gundersen, which addresses 10 C.F.R. § 50.59 analyses and the replacement of steam generators⁶¹ and a Declaration from Victoria Clemons, a member of the public that learned about the shield building rebar failure at a public meeting.⁶² Dr. Gundersen’s report and Ms. Clemons’ declaration do not support Intervenor’s concerns about Davis-Besse’s shield building cracking, concrete void, or broken rebar. Neither the report or the declaration connect the shield building cracking, concrete void, or broken rebar to an environmental or safety impact. Contention 6 is not admissible because it lacks adequate support and does not meet the standard in 10 C.F.R. § 2.309(f)(1)(v).

c. Contention 6 Does Not Raise a Genuine Dispute with the LRA

As the Board explained in its Memorandum and Order denying Contention 5,⁶³ a properly formulated contention must focus on the license application in question, challenging either specific portions of, or alleged omissions from, the application (including the safety

⁵⁸ See Contention 6 Motion at 26–27.

⁵⁹ See NRC Staff’s Answer at 44–45.

⁶⁰ See generally Contention 6 Motion.

⁶¹ See Contention 6 Motion, Exh. 8, Expert Witness Report of Arnold Gundersen at 3–12 (May 20, 2013).

⁶² See Exh. 3, Clemons Declaration.

⁶³ LBP-12-27, 76 NRC at 595.

analysis report/technical report and the ER) so as to establish that a genuine dispute exists with the applicant on a material issue of law or fact.⁶⁴ Any contention that fails to directly controvert the application or that mistakenly asserts the application does not address a relevant issue will be dismissed.⁶⁵

In this case, Intervenors articulate numerous concerns about the Aging Management Programs related to the Shield Building⁶⁶ and challenge the sufficiency of the previous modifications made to the Aging Management Programs.⁶⁷ Intervenors, however, have not made clear why the AMPs are deficient, or how the AMPs should be improved.⁶⁸ Intervenors have indicated that the Board should admit their proposed contention so that Intervenors can “determine the adequacy of, and if need be, to challenge the sufficiency of, modifications to the Shield Building Monitoring Program and the Structures Monitoring Program Aging Management Plans. . . .”⁶⁹ Intervenors allege that the “cracking problem has proven not to be susceptible of management under AMP commitments in place since 2012,”⁷⁰ but Intervenors do not state how the AMPs are deficient.⁷¹

The Board has addressed this issue before. In fact, Intervenors’ failure to specifically challenge the adequacy of the Shield Building Monitoring AMP in Contention 5, and the five

⁶⁴ See 10 C.F.R. § 2.309(f)(1)(vi).

⁶⁵ See North Trend Expansion Project, CLI-09-12, 69 NRC at 557; American Centrifuge Plant, CLI-06-10, 63 NRC at 462–63.

⁶⁶ See, e.g., Contention 6 Motion at 26–27.

⁶⁷ See, e.g., id. at 2.

⁶⁸ See generally id.

⁶⁹ Id. at 2.

⁷⁰ Id. at 27.

⁷¹ See generally id.

related motions to amend, resulted in the Board's denial of the admission of Contention 5.⁷² Because Contention 6 suffers from the same underlying flaw as Contention 5 (not raising a genuine dispute with the LRA), the Board must deny Contention 6. Contention 6 does not meet the standard in 10 C.F.R. § 2.309(f)(1)(vi).

d. Contention 6 Does Not Raise a Material Issue

FENOC⁷³ and the NRC Staff⁷⁴ assert that the proposed contention does not raise an issue that is material to the findings that NRC must make in accordance with 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment.⁷⁵

As we stated in LBP-12-27,⁷⁶ the regulations require that all contentions proffer an issue of law or fact that is material to the outcome of a licensing proceeding, meaning that the subject matter of the contention must impact the grant or denial of a pending license application.⁷⁷

While Intervenors provide a thorough history of the shield building cracking that led to the filing of Contention 6, including a summary of Contention 5 and the associated motions to amend, Intervenors do not state how any of their current concerns prevent the Staff from making the required license renewal findings.⁷⁸ For instance, Intervenors assert that the root

⁷² LBP-12-27; 76 NRC at 609–10.

⁷³ See FENOC's Answer at 32–37.

⁷⁴ See NRC Staff's Answer at 44–52.

⁷⁵ See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 75–76 (1996), rev'd in part on other grounds, CLI-96-7, 43 NRC 235 (1996); see also Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439–41 (2002), petition for review denied, CLI-03-12, 58 NRC 185, 191 (2003).

⁷⁶ LBP-12-27, 76 NRC at 594.

⁷⁷ See 10 C.F.R. § 2.309(f)(1)(iv).

⁷⁸ See generally Contention 6 Motion.

cause of the cracking is not known and needs to be known.⁷⁹ However, Intervenors do not describe how the root causes of the cracking, concrete void, or rebar problems would impact the Staff license renewal findings.⁸⁰ As the NRC Staff explains in its answer, the Staff's aging management review focuses on "managing the functionality of systems, structures, and components [SSCs] in the face of detrimental aging effects as opposed to identification and mitigation of aging mechanisms."⁸¹ Intervenors fail to explain why the specific approach being used to monitor the cracking is inadequate.⁸²

Additionally, the NRC Staff points out that the purpose of the AMP is "to provide reasonable assurance that the existing environmental conditions will not cause aging effects that could result in a loss of component intended function."⁸³ Again, other than stating that the AMPs are deficient,⁸⁴ Intervenors do not indicate what portion of the License Renewal Application is inadequate or what specifically is wrong with the analysis.⁸⁵ The Commission has stated that challenges to an application's analysis will fail if the challenge does not state what is wrong with the analysis other than the analysis is "deficient."⁸⁶

⁷⁹ See id. at 7, 13, 35.

⁸⁰ See generally id.

⁸¹ NRC Staff's Answer at 46 (quoting 60 Fed. Reg. at 22,488).

⁸² See generally Contention 6 Motion.

⁸³ NRC Staff's Answer at 46 (citing FirstEnergy Notification of Filing Related to Proposed Shield Building Cracking Contention (Apr. 5, 2012), Enclosure L-12-028 at 15 (ADAMS Accession No. ML12097A216)) (emphasis not included).

⁸⁴ See, e.g., Contention 6 Motion at 16 ("Another deficiency in existing AMP arrangements is that they wholly neglect the shield building's inner face exposure to the elements.").

⁸⁵ See generally id.

⁸⁶ See Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 270 (2010).

Intervenors' motion states that they "move for admission of Contention 6 in order to determine the adequacy of, and if need be, to challenge the sufficiency of, modifications to the Shield Building Monitoring Program and the Structures Monitoring Program Aging Management Plans ("AMPS") credited for the shield building in the Davis-Besse License Renewal Application ("LRA").⁸⁷ Further, Intervenors claim that they "seek to litigate the adequacy of FENOC's anticipated modifications to Davis-Besse's Shield Building Monitoring Program and the Structures Monitoring AMPs."⁸⁸

To the extent that Intervenors have proffered Contention 6 in advance of future modifications to the relevant AMPs that they assume will occur as a result of the recently identified structural problems, it is premature. The Board notes that the modifications to Davis-Besse's Shield Building Monitoring Program, anticipated by the Intervenors, were provided on July 3, 2014 in Amendment No. 51 to the Davis-Besse LRA.⁸⁹ Specific intervenor concerns regarding specific portions of LRA Amendment No. 51 may be submitted to the Board in a timely manner for its consideration as specified by our Initial Scheduling Order.⁹⁰

Contention 6, as presently before us, is inadmissible because it does not address the LRA or the specific provisions of an LRA amendment and thus, fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv).

VI. CONCLUSION

For the reasons stated above, Intervenors' Motion for Admission of Contention No. 6 on

⁸⁷ Contention 6 Motion at 2 (emphasis added).

⁸⁸ Id. (emphasis added).

⁸⁹ See Letter from Timothy P. Matthews, Counsel for FENOC, to Davis-Besse Licensing Board, Notification of Documents Related to the Davis-Besse Shield Building, at Encl. 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. 51 (July 8, 2014). As a note, Mr. Timothy's letter to the Board is dated July 8, 2014. Enclosure 1 to the letter is dated July 3, 2014.

⁹⁰ The Board's Initial Scheduling Order for this case provides a 60-day window for the submission of new or amended contentions. See ISO at 12.

Shield Building Concrete Void, Cracking and Broken Rebar Problems is denied.

While this Order is not subject to appeal to the Commission as a matter of right at this time, Intervenors may consider whether significant and novel legal or policy issues exist which would warrant a petition to the Commission for interlocutory review pursuant to 10 C.F.R.

§ 2.341(f)(2).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

/RA/

Dr. William E. Kastenberg
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 25, 2014

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 **MEMORANDUM AND ORDER (Denying Intervenors' Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems)** have been served upon the following persons by Electronic Information Exchange.

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MEMORANDUM AND ORDER (Denying Intervenor's Motion for Admission of Contention No. 6 on Shield Building Concrete Void, Cracking and Broken Rebar Problems)

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[Original signed by Brian Newell _____]
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Dated at Rockville, Maryland
this 25th day of July, 2014