

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

March 10, 2015

ORDER  
(Terminating Proceeding)

On August 27, 2010, FirstEnergy Nuclear Operating Company (FENOC) filed to renew its operating license for the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse) for twenty years.<sup>1</sup> On December 27, 2010, Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (collectively, Intervenors) filed a hearing request,<sup>2</sup> which we granted.<sup>3</sup>

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<sup>1</sup> See [FENOC's] License Renewal Application, Davis-Besse Nuclear Power Station at 1.0-1, 1.1-1, 2.1-25 (Aug. 31, 2010) (ADAMS Accession Nos. ML102450567, ML102450563).

<sup>2</sup> See generally 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).

<sup>3</sup> See LBP-11-13, 73 NRC 534, 588–89 (2011).

On September 29, 2014, Intervenors moved to admit a new contention arguing that because the recently promulgated Continued Storage of Spent Nuclear Fuel Rule<sup>4</sup> “no longer makes generic safety findings concerning the feasibility and capacity of spent fuel disposal,” the issue had to be litigated in front of this Board before the Davis-Besse license could be renewed.<sup>5</sup> The Commission chose to review this and other substantively similar motions, along with associated petitions to suspend reactor licensing, based upon its “inherent supervisory authority over agency adjudications.”<sup>6</sup>

On January 15, 2015, the Board denied Intervenors’ motion to admit Contention 7, the last remaining contention still pending before the Board, concerning cracking of the shield building at Davis-Besse.<sup>7</sup> At that time, however, the Board did not terminate this adjudicatory proceeding because the Commission had yet to address the continued storage safety findings contention.<sup>8</sup>

On February 26, 2015, in CLI-05-04, the Commission denied the suspension petitions and Intervenors’ motion to admit the new continued storage safety findings contention.<sup>9</sup> With the issuance of CLI-05-04, there are now no proffered or admitted contentions remaining in this

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<sup>4</sup> Continued Storage of Spent Nuclear Fuel, Final Rule, 79 Fed. Reg. 56,238 (Sept. 19, 2014); see also Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Servs., LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), et al., CLI-14-08, 80 NRC 71 (2014).

<sup>5</sup> See Intervenors’ Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Relicensing Proceeding for Davis-Besse Nuclear Power Station at 1–2 (Sept. 29, 2014).

<sup>6</sup> DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), et al., CLI-14-9, 80 NRC \_\_, \_\_ (slip op. at 2–3) (Oct. 7, 2014).

<sup>7</sup> See LBP-15-01, 81 NRC \_\_, \_\_ (slip op. at 2) (Jan. 15, 2015).

<sup>8</sup> Id. at \_\_ (slip op. at 36).

<sup>9</sup> DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), et al., CLI-15-04, 81 NRC \_\_, \_\_ (slip op. at 3, 31) (Feb. 26, 2015).

adjudicatory proceeding, and the Board's jurisdiction terminates.<sup>10</sup>

Pursuant to 10 C.F.R. § 2.341(a), this order shall constitute the final decision of the Commission 120 days from the date of its issuance, unless within twenty-five (25) days a petition for review is filed in accordance with 10 C.F.R. § 2.341(b) or the Commission directs otherwise.<sup>11</sup>

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD  
**/RA/**

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE  
**/RA/**

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Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE  
**/RA/**

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Dr. William E. Kastenberg  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 10, 2015

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<sup>10</sup> See Va. Electric & Power Co. (Combined License Application for North Anna Unit 3), CLI-12-14, 75 NRC 692, 699, 701 (2012) (stating that a licensing board's "ruling resolving the last pending contention" is equivalent to a final decision under 10 C.F.R. § 2.341, and a licensing board's "jurisdiction ends after it has rendered a final decision"); see also Exelon Generation Co. (Byron Nuclear Power Station, Units 1 & 2 et al.), CLI-14-6, 79 NRC 445, 449 (2014) ("Under our practice, 'once all contentions have been decided, the contested [adjudicatory] proceeding is terminated.'" (quoting North Anna, CLI-12-14, 76 NRC at 699) (modification in original)).

<sup>11</sup> On March 6, 2015 FENOC filed a "Motion for Clarification Regarding Termination of the Davis-Besse License Renewal Adjudicatory Proceeding." This Order (Terminating Proceeding) addresses FENOC's concern.

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 **ASLB ORDER LBP-15-9 (Terminating Proceeding)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Brian Newell \_\_\_\_\_]  
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Dated at Rockville, Maryland  
this 10<sup>th</sup> day of March, 2015