

May 18, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
FIRSTENERGY NUCLEAR OPERATING CO.) Docket No. 50-346-LR
)
(Davis-Besse Nuclear Power Station, Unit 1))

NRC STAFF ANSWER TO BEYOND NUCLEAR'S
MOTION TO AMEND NEPA PLACEHOLDER CONTENTION IN
LICENSE RENEWAL PROCEEDING FOR DAVIS-BESSE NUCLEAR POWER PLANT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer to “Beyond Nuclear’s Motion to Amend NEPA Placeholder Contention in License Renewal Proceeding for Davis-Besse Nuclear Power Plant” filed by Beyond Nuclear on May 8, 2015 in the Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse) license renewal proceeding (Motion to Amend).¹ As the Staff indicated during consultation, it does not object to Beyond Nuclear notifying the Commission and the participants to this proceeding of the issuance of the final supplemental environmental impact statement (FSEIS) for the renewal of the Davis-Besse operating license.² However, the Staff does object to Beyond Nuclear’s Motion to Amend based on this FSEIS because its proposed amended contention does not materially change its original contention, which remains an inadmissible challenge to the Commission’s regulations.

¹ Beyond Nuclear’s Motion to Amend NEPA Placeholder Contention in License Renewal Proceeding for Davis-Besse Nuclear Power Plant (May 8, 2015) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15128A291) (Motion to Amend).

² See NUREG-1437, Supplement 52, Vols. 1 & 2, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Davis-Besse Nuclear Power Station* (Apr. 2015) (ADAMS Accession Nos. ML15112A098 and ML15113A187) (FSEIS).

BACKGROUND

The instant Motion to Amend seeks to amend a “place-holder” contention previously proffered in a Petition to Intervene³ and Motion to Reopen the Record⁴ filed by Beyond Nuclear on April 22, 2015. The April 22, 2015 contention asserted that the draft supplemental environmental impact statement (DSEIS) for the renewal of the Davis-Besse operating license is inadequate under the National Environmental Policy Act of 1969, as amended (NEPA), because its evaluation of the environmental impacts of spent fuel storage and disposal relies on the Commission’s final rule and generic environmental impact statement (GEIS) regarding the environmental impacts of the continued storage of spent fuel (the Continued Storage Rule⁵ and Continued Storage GEIS,⁶ respectively).⁷ On May 1, 2015, the Staff answered the Petition to Intervene and Motion to Reopen.⁸

On May 7, 2015, the NRC made publicly available the FSEIS for the renewal of the Davis-Besse operating license.⁹ Subsequently, Beyond Nuclear filed the instant Motion to

³ Beyond Nuclear’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Davis-Besse Nuclear Power Plant (Apr. 22, 2015) (ADAMS Accession No. ML15112B201) (Petition).

⁴ Beyond Nuclear’s Motion to Reopen the Record of License Renewal Proceeding For Davis-Besse Nuclear Power Plant (Apr. 22, 2015) (ADAMS Accession No. ML15112B199) (Motion to Reopen).

⁵ Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014) (Final rule) (Continued Storage Rule).

⁶ NUREG-2157, Vols. 1 & 2, *Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel* (Sept. 2014) (ADAMS Accession Nos. ML14196A105 and ML14196A107) (Continued Storage GEIS).

⁷ See Petition at 4; Motion to Reopen at 1.

⁸ See NRC Staff Answer to Beyond Nuclear’s Hearing Request and Petition to Intervene and Motion to Reopen the Record in the License Renewal Proceeding for Davis-Besse Nuclear Power Plant (May 1, 2015) (ADAMS Accession No. ML15121A499). For purposes of this answer, the Staff will avoid repeating all of the background and discussions that were previously provided by the Staff but remain applicable to the instant Motion to Amend filed by Beyond Nuclear.

⁹ See FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1, 80 Fed. Reg. 26,301 (May 7, 2015).

Amend seeking to amend its previously-filed “place-holder” contention to reference the Davis-Besse license renewal FSEIS instead of the DSEIS.¹⁰

DISCUSSION

According to 10 C.F.R. § 2.309(f)(2), a participant may file a new or amended environmental contention after the deadline for filing contentions based on an FSEIS if the new or amended contention complies with 10 C.F.R. § 2.309(c), which, in turn, requires a demonstration of good cause by showing that, among other things, the information upon which the new or amended contention is based is materially different from information previously available.

Beyond Nuclear has not demonstrated that the FSEIS is materially different from the DSEIS with respect to its proposed “place-holder” contention. Regardless of whether it references to the DSEIS or the FSEIS, the proposed “place-holder” contention is an inadmissible challenge to the Commission’s Continued Storage Rule and Continued Storage GEIS. The Commission recently denied contentions substantively identical to Beyond Nuclear’s proposed “place-holder” contention because they challenged the Continued Storage GEIS and not the environmental documents relevant to their proceedings; thus, they did not demonstrate a genuine dispute with the applicant on a material issue.¹¹ Similarly, Beyond Nuclear’s statement of its amended contention relies on its prior “comments on the [Continued Storage] Rule and GEIS”¹² and does not identify any sections of the FSEIS that it disputes beyond the fact that the FSEIS “explicitly references and discusses the Continued . . . Storage Rule and GEIS”¹³

¹⁰ Motion to Amend at 1.

¹¹ *Union Elec. Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC __, __ (Apr. 23, 2015) (slip op. at 4); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC __, __ (Apr. 23, 2015) (slip op. at 4).

¹² Motion to Amend at 2-3.

¹³ *Id.* at 4.

Since Beyond Nuclear's amended contention only challenges the Commission's Continued Storage Rule and GEIS, the Commission should deny the Motion to Amend for not demonstrating that it is based upon information materially different from information previously available.

CONCLUSION

There is no material difference between Beyond Nuclear's previously-filed "place-holder" contention and its proposed amended "place-holder" contention. Regardless of whether it refers to the Davis-Besse FSEIS instead of the DSEIS, the proposed amended contention remains an inadmissible challenge to the Commission's Continued Storage Rule and Continued Storage GEIS. Accordingly, the Commission should deny Beyond Nuclear's Motion to Amend.

Respectfully submitted,

/Signed (electronically) by/

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Executed in Accord with 10 CFR 2.304(d)

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Dated at Rockville, Maryland
this 18th day of May, 2015

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO BEYOND NUCLEAR'S MOTION TO AMEND NEPA PLACEHOLDER CONTENTION IN LICENSE RENEWAL PROCEEDING FOR DAVIS-BESSE NUCLEAR POWER PLANT," dated May 18, 2015 have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 18th day of May, 2015.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 18th day of May, 2015