

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BLUE RIDGE ENVIRONMENTAL)	
DEFENSE LEAGUE, INC.)	
)	
Petitioner,)	
)	
v.)	No. 15-1258
)	Consolidated with
U.S. NUCLEAR REGULATORY)	Nos. 15-1259, 15-1260,
COMMISSION)	15-1261, 15-1262, 15-1263
and UNITED STATES OF)	
AMERICA,)	
)	
Respondents.)	

**MOTION FOR LEAVE TO INTERVENE BY
FIRSTENERGY NUCLEAR OPERATING COMPANY**

Pursuant to 28 U.S.C. § 2348, Rules 15(d) and 27 of the Federal Rules of Appellate Procedure, and Rules 15(b) and 27 of the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, FirstEnergy Nuclear Operating Company (“FirstEnergy”) hereby moves for leave to intervene in the above-referenced proceedings. FirstEnergy, on behalf of the owner, is the operator of the Davis-Besse Nuclear Power Station, Unit 1, Oak Harbor, Ohio (“Davis-Besse”), and the holder of the Nuclear Regulatory Commission (“NRC,” or “Commission”) operating license for that plant. The Davis-Besse plant is the subject of a license renewal proceeding before the NRC, wherein Beyond Nuclear,

the Petitioner in one of these consolidated appeals, challenged the renewal of the license. *See Beyond Nuclear v. Nuclear Regulatory Commission*, No. 15-1263 (consolidated with this proceeding by Order dated August 7, 2015). FirstEnergy is a party in interest in the proceeding before the agency, whose interests will be affected if an order of the agency is or is not set aside, and may therefore appear “as of right” in this appeal pursuant to 28 U.S.C. § 2348. FirstEnergy respectfully requests leave to so appear.

Beyond Nuclear’s stated rationale for filing this Petition is to ensure that any decision of this Court in a related proceeding, *State of New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (D.C. Cir.) (“*New York II*”), would be implemented as part of the license renewal decision for Davis-Besse. Because Beyond Nuclear purports to challenge the renewal of the operating license for Davis-Besse, the relief sought in this Petition would, if granted, significantly and uniquely impact FirstEnergy’s operation of Davis-Besse. FirstEnergy therefore has a direct interest in this proceeding.

In further support, FirstEnergy states the following:

1. On August 6, 2015, Beyond Nuclear filed in this Court Case No. 15-1263, pursuant to Rule 15 of the Federal Rules of Appellate Procedure, 42 U.S.C. § 2239, 28 U.S.C. § 2344, and 5 U.S.C. § 702. The Petition purports to challenge a final decision of the NRC in which the NRC denied motions by Beyond Nuclear to

re-open the record of the Davis-Besse license renewal proceeding and admit a contention asserting that the NRC violated the National Environmental Policy Act (“NEPA”). In particular, Beyond Nuclear’s Petition claims that the NRC violated NEPA by relying upon the Continued Storage of Spent Nuclear Fuel Rule, 79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Storage Rule”) and the supporting Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,263 (Sept. 19, 2014). Similar challenges to the NRC’s Continued Storage Rule and the supporting Generic Environmental Impact Statement are the subject of the petitions for review in *New York II*. Beyond Nuclear’s motion before the Commission sought to reopen the record and admit a “placeholder” contention to ensure that the outcome of the pending *New York II* appeal before this Court would apply to all other NRC licensing proceedings.

2. Five similar petitions involving other nuclear power plants were filed in this Court on the same day, August 6, 2015. By order dated August 7, 2015, this Court *sua sponte* consolidated the Davis-Besse proceeding with the other similar recently-filed cases, under the lead Docket Number 15-1258. The Court also granted the petitioners’ motions to hold the proceedings in abeyance.

3. In its Order, CLI-15-15, the Commission denied Beyond Nuclear’s motion, which was substantively identical to those filed by other environmental organizations in other NRC proceedings. The Commission held that, for the

reasons stated in its decisions in *Union Electric Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC __ (Apr. 23, 2015) (slip op.) and *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC __ (Apr. 23, 2015) (slip op.), it would deny the Davis-Besse motion. In the *Callaway* decision, in turn, the Commission ruled that because the contentions did not relate specifically to the licensing proceeding at issue, but instead sought to challenge the generic findings underlying the Continued Storage Rule, the petition to intervene was an impermissible challenge to an NRC regulation and outside the scope of an individual licensing proceeding. *See Callaway*, CLI-15-11, slip op. at 4. The Commission expressly relied on this rationale in dismissing Beyond Nuclear's motion in the Davis-Besse licensing proceeding. *See CLI-15-15*, slip op. at 2.

4. As the operator and holder of the NRC operating license for Davis-Besse, FirstEnergy will be directly impacted by this Court's review of this Petition. If Beyond Nuclear's request for relief were to be granted, then FirstEnergy's rights with respect to the license renewal for Davis-Besse could be substantially and adversely affected. FirstEnergy, therefore, has a unique, direct, and substantial interest in this proceeding.

5. In general, the Courts of Appeals have evaluated intervention requests consistent with the standards of Rule 24(a)(2) of the Federal Rules of Civil Procedure. *See, e.g., Bldg. & Constr. Trades Dep't, AFL-CIO v. Reich*, 40 F.3d

1275, 1282 (D.C. Cir. 1994); *Sierra Club v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004). Rule 24(a)(2) permits intervention when the movant “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”

6. Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2348, FirstEnergy should be deemed to be a party to this proceeding. Beyond Nuclear has explicitly identified FirstEnergy’s Davis-Besse plant as the focus of the Petition. FirstEnergy is responsible for property that is the subject of this action, and therefore has a direct and substantial interest in the outcome of this proceeding. The disposition of this action may as a practical matter impair or impede FirstEnergy’s ability to protect its interests. FirstEnergy is the only party fully capable of asserting and protecting the unique interests that it has in the subject matter of this proceeding.

7. Finally, FirstEnergy does not necessarily concede that the Beyond Nuclear Petition is procedurally proper or within this Court’s jurisdiction, nor does FirstEnergy concede any effect of a decision in *New York II*, and FirstEnergy reserves all rights in that regard.

WHEREFORE, for the foregoing reasons, FirstEnergy respectfully requests that this Court grant FirstEnergy leave to intervene in the above-captioned proceeding, with the full rights attendant thereto.

Respectfully Submitted,

s/ Brad Fagg

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Dated: September 4, 2015

Attorneys for
FirstEnergy Nuclear Operating Company

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**FIRSTENERGY NUCLEAR OPERATING COMPANY’S
CERTIFICATIONS AND DISCLOSURES**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, FirstEnergy Nuclear Operating Company (“FENOC”) provides the following disclosure statement to accompany its Motion for Leave to Intervene.

FENOC operates the four nuclear generating units, owned in whole or majority part by FirstEnergy Nuclear Generation, LLC. FENOC and FirstEnergy Nuclear Generation, LLC are wholly-owned subsidiaries of FirstEnergy Corp., which has electrical generation, electrical distribution and electrical transmission subsidiaries which operate within a nearly 65,000-square-mile area of Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia. No other entity owns more than 10% of FENOC.

In addition, pursuant to Circuit Rules 27(a)(4), and 28(a)(1)(A), the undersigned counsel for FirstEnergy Nuclear Operating Company certifies as follows:

- (1) The following parties appeared before the U.S. Nuclear Regulatory Commission:
 - (a) Applicant: FirstEnergy Nuclear Operating Company.
 - (b) Former Intervenor: Beyond Nuclear.
 - (c) Agency: Staff of the Nuclear Regulatory Commission.
- (2) The following parties appear before this Court:
 - (a) Petitioner: Beyond Nuclear.
 - (b) Respondents: U.S. Nuclear Regulatory Commission and the United States of America.
 - (c) Intervenor: FirstEnergy Nuclear Operating Company.

s/ Brad Fagg

Brad Fagg

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Dated: September 4, 2015

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25 of this Court, I hereby certify that I have this 4th day of September, 2015, served the Motion for Leave to Intervene by FirstEnergy Nuclear Operating Company and the FirstEnergy Nuclear Operating Company’s Certifications and Disclosures through the electronic filing system.

In addition, pursuant to Electronic Case Filing Rule ECF-6 and Circuit Rule 27(b), I submitted four paper copies of these documents by First Class Mail addressed to the Clerk.

s/ Brad Fagg

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