

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

February 13, 2012

ORDER DENYING UNOPPOSED MOTION FOR LEAVE TO RESPOND TO NRC STAFF'S  
ANSWER TO PROPOSED CONTENTION 5 and SETTING PROPOSED CONTENTION 5's  
ADMISSIBILITY FOR ORAL ARGUMENT

On January 10, 2012, Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio (Joint Intervenors) filed a motion with the Atomic Safety and Licensing Board (Board) to admit a newly-proposed Contention 5 regarding shield building cracking.<sup>1</sup> FirstEnergy Nuclear Operating Company (FENOC) and the Nuclear Regulatory Commission Staff (NRC Staff) filed answers to the proposed Contention 5 on February 6, 2012.<sup>2</sup> Proposed Contention 5 reads as follows:

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<sup>1</sup> Motion for Admission of Contention No. 5 on Shield Building Cracking (Jan. 10, 2012) ("Contention 5").

<sup>2</sup> NRC Staff's Answer to Motion to Admit New Contention Regarding the Safety Implications of Newly Discovered Shield Building Cracking (Feb. 6, 2012) ("Staff Answer"); FENOC's Answer Opposing Intervenors' Motion for Admission of Contention No. 5 on Shield Building Cracking (Feb. 6, 2012).

Intervenors contend that FirstEnergy's recently-discovered, extensive cracking of unknown origin in the Davis-Besse shield building/secondary reactor radiological containment structure is an aging-related feature of the plant, the condition of which precludes safe operation of the atomic reactor beyond 2017 for any period of time, let alone the proposed 20-year license period.<sup>3</sup>

On February 9, 2012, FENOC filed an unopposed motion requesting leave from the Board to file a short response to the NRC Staff's Answer.<sup>4</sup> FENOC requested that the Board schedule oral argument on Contention 5 should the Board deny the Motion. FENOC desires to address on the record its concerns related to the new arguments and the following revised contention language advanced in the NRC Staff's Answer:

Is the Structures AMP adequate to address any aging effects for the shield building that are related to the cracks identified by FENOC during the October 10, 2011 reactor head replacement and subject to a root cause evaluation to be provided by FENOC on February 28, 2012 such that the shield building would be unable to perform its intended functions of: 1) protecting the steel containment from environmental effects, including wind, tornado, and external missiles, 2) providing biological shielding, 3) providing controlled release of the annulus during an accident, and 4) providing a means for collection and filtration of fission product leakage from the Containment Vessel following a hypothetical accident?<sup>5</sup>

Rather than begin a flurry of responsive pleadings, the Board believes that oral argument would be helpful in deciding the admissibility of proposed Contention 5. The Board will therefore set this matter for oral argument at a time and place to be announced. The Board's law clerk will

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<sup>3</sup> Contention 5 at 11.

<sup>4</sup> FENOC's Unopposed Motion for Leave to Respond to the NRC Staff's Answer to Proposed Contention 5 on Shield Building Cracking (Feb. 9, 2012). Counsel for FENOC certified under 10 C.F.R. § 2.323(b) and Initial Scheduling Order Section G.1 that it consulted with the other parties regarding this request. Id. at 2, n.4. Counsel for the NRC Staff indicated that the Staff does not oppose FENOC's request to file a responsive brief. Id. Counsel for Joint Intervenors similarly indicated that Joint Intervenors would not oppose FENOC's request, provided FENOC does not oppose an opportunity for Joint Intervenors to file a rebuttal pleading. Id.

<sup>5</sup> Staff Answer at 16.

contact the parties to arrange a mutually convenient time and place to hold said oral argument.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 13, 2012

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 ORDER (Denying Unopposed Motion for Leave to Respond to NRC Staff's Answer to Proposed Contention 5 and Setting Proposed Contention 5's Admissibility for Oral Argument) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 50-346-LR

ORDER (Denying Unopposed Motion for Leave to Respond to NRC Staff's Answer to Proposed Contention 5 and Setting Proposed Contention 5's Admissibility for Oral Argument)

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[Original signed by Christine M. Pierpoint ]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 13<sup>th</sup> day of February 2012