

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 1, 2011

NOTICE AND ORDER
(Scheduling Oral Argument)

The Board will hear oral argument on standing and the contention admissibility issues presented in the petition for leave to intervene and request for hearing dated December 27, 2010 filed by Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario (Ontario Citizens Alliance), Don't Waste Michigan, and the Green Party of Ohio (collectively, Joint Petitioners).¹

This proceeding arises from an application, dated August 27, 2010, filed by FirstEnergy Nuclear Operating Company (FENOC) to renew its operating license for the Davis-Besse Nuclear Power Station, Unit 1 for an additional twenty years from the current expiration date of April 22, 2017 to April 22, 2037.² The Davis-Besse site is located in Ottawa County, Ohio, approximately

¹ Beyond Nuclear, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio Request for Public Hearing and Petition To Intervene (Dec.27, 2010) (hereinafter Petition).

² 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

twenty miles east of Toledo, Ohio.

On October 25, 2010, a Notice of Opportunity for Hearing was published in the Federal Register.³ On December 27, 2010, the Joint Petitioners filed a petition for leave to intervene and request for hearing.⁴ The Joint Petitioners set forth four contentions regarding the Davis-Besse application. Three of the four contentions allege that the environmental report failed to appropriately consider alternatives to the license renewal because it failed to consider wind energy, solar photovoltaic energy, and combination of wind and solar photovoltaic.⁵ The fourth contention challenged the conclusions of Davis-Besse's severe accident mitigation alternatives analysis.⁶

The oral argument will be held in the Common Pleas courtroom (Courtroom 1) in the Ottawa County Court House, 315 Madison Street, Port Clinton, Ohio.⁷ Argument will begin at 9:00 am on Tuesday, March 1, 2011 and will end no later than 4:30 pm that day.

Only the duly authorized representatives or counsel for the Joint Petitioners, FENOC, and the staff of the Nuclear Regulatory Commission who have entered an appearance pursuant to 10 C.F.R. § 2.314(b) will be entitled to participate. The oral argument will proceed as follows. First, we will hear short opening statements, limited to ten minutes each, from the Joint Petitioners, FENOC and the NRC Staff. Second, the Board will hear argument on the standing of each of the

Operating Company, Davis-Besse Nuclear Power Station, 75 Fed. Reg. 65,528, 65,528-29 (Oct. 25, 2010). Notice of receipt of FENOC's license renewal application was published in the Federal Register on September 20, 2010. FirstEnergy Nuclear Operating Company, Notice of Receipt and Availability of Application for Renewal of Davis Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF-003 for an Additional 20-Year Period, 75 Fed. Reg. 57,299 (Sept. 20, 2010).

³ Notice of Acceptance, 75 Fed. Reg. at 65,529.

⁴ Petition.

⁵ Id. at 10, 68-69, 93.

⁶ Id. at 99-102.

⁷ 41°30'35" N, 82°56'24" W.

Joint Petitioners. Third, we will hear argument on each of the proffered contentions.⁸ Fourth, we will hear short closing statements, limited to five minutes each, from the Joint Petitioners, FENOC and the NRC Staff.

Except for the opening and closing statements, the sole purpose of the oral argument is to allow the Board to ask questions and receive answers, to clarify the Board's understanding of legal issues and factual points and assist it in deciding the standing and contention admissibility issues presented by the pleadings. Unless otherwise specified, no presentations or submission of additional materials by the parties will be entertained. Counsel and representatives are encouraged to be familiar with the relevant law on standing, contention admissibility, and 10 C.F.R. Parts 2 and 51, and should keep in mind that the Board has read their pleadings. In preparing for the oral argument, counsel and representatives should focus on the critical points in controversy, as they have emerged in the pleadings.

No witnesses, other representatives of the parties, or members of the public will be heard at this time. However, members of the public and representatives of the media are welcome to attend and observe this proceeding. This is an adjudicatory proceeding and the Board intends to conduct an orderly oral argument, focused solely on standing and contention admissibility questions. Signs, banners, posters, and displays are prohibited in accordance with NRC policy.⁹ All interested persons should arrive at least fifteen minutes early so as to allow sufficient time to pass through any security screening.

Limited appearance statements, pursuant to 10 C.F.R. § 2.315(a), will not be entertained at this time. If contentions are ultimately admitted, then the Board will accept written limited

⁸ A preliminary list of the areas in which the Board has questions is attached as Appendix A to this Notice, and we may specify, in a subsequent order or at the commencement of oral argument on March 1, 2011, additional areas and specific questions upon which we will want the participants to focus. Nonetheless, the participants should be prepared to answer questions concerning all issues raised in the pleadings.

⁹ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001).

appearance statements and, at a later date, may hear oral limited appearance statements regarding admitted contentions.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 1, 2011

Appendix A

Preliminary List of Topics to be discussed at the March 1, 2011 Oral Argument

Timeliness:

1. Was the Joint Petitioners' Request for Hearing filed timely?

Standing:

1. Are the Coronados entitled to the "proximity presumption?"
2. Has the organization Citizens Environmental Alliance of of Southwestern Ontario shown it has standing?

Contentions 1-3:

1. Can Wind, Solar or a Combination of Wind and Solar be considered Base-load?
2. What legal standard determines whether an alternative is reasonable, and do Wind, Solar, or a Combination of Wind and Solar meet that standard?
3. Are Wind, Solar or a Combination of Wind and Solar considered alternatives in the preparation of environmental impact statements prepared by the NRC Staff in license renewal cases?

Contention 4:

1. How does an applicant appropriately meet the requirements of 10 C.F.R. Part 51 regarding severe accident mitigation analysis?
2. What information is necessary legally, at the contention admissibility stage, for a petitioner to challenge a SAMA analysis in an ER?
3. Are there plausible scenarios or a factual allegation in this case that if the input data were changed in the SAMA analysis accordingly, the conclusions drawn from the cost/benefit analysis would change?

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE AND ORDER (Scheduling Oral Argument) have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
Washington, DC 20555-0001

William J. Froehlich, Chair
Administrative Judge
E-mail: wjf1@nrc.gov

Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

William E. Kastenberg
Administrative Judge
E-mail: wek1@nrc.gov

Hillary Cain
Law Clerk
E-mail: hillary.cain@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Edward L. Williamson, Esq.
E-mail: edward.williamson@nrc.gov
Brian Harris, Esq.
E-mail: brian.harris@nrc.gov
Emily Monteith, Esq
E-mail: emily.monteith@nrc.gov
Brian P. Newell, Paralegal
E-mail: brian.newell@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov
FirstEnergy Service Company.
Mailstop: A-GO-15
76 South Main Street
Akron, OH 44308
David W. Jenkins, Esq.
E-mail : djenkins@firstenergycorp.com

Docket No. 50-346-LR

NOTICE AND ORDER (Scheduling Oral Argument)

Morgan, Lewis & Bockius
Pennsylvania Avenue, NW
Washington, D.C. 20004
Stephen Burdick, Esq.
E-mail: sburdick@morganlewis.com
Alex Polonsky, Esq.
E-mail: apolonsky@morganlewis.com
Kathryn M. Sutton, Esq.
E-mail: ksutton@morganlewis.com
Timothy Matthews, Esq.
E-mail: tmatthews@morganlewis.com
Mary Freeze, Legal Secretary
E-mail: mfreeze@morganlewis.com

Citizens Environmental Alliance (CEA)
of Southwestern Ontario
1950 Ottawa Street
Windsor, Ontario Canada N8Y 197

Green Party of Ohio
2626 Robinwood Avenue
Toledo, Ohio 43610

Don't Waste Michigan
811 Harrison Street
Monroe, Michigan 48161
Michael Keegan
E-mail: mkeeganj@comcast.net

Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, Md. 20912
Kevin Kamps
Kevin@beyondnuclear.org
Paul Gunter
www.beyondnuclear.org

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

Dated at Rockville, Maryland
this 1st day of February 2011