

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

August 8, 2012

ORDER

(Suspending Procedural Date Related to Proposed Waste Confidence Contention)

On July 9, 2012, the Intervenor in this proceeding filed a Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station.¹ The Motion raised a new contention alleging that FirstEnergy Nuclear Operating Company's (FENOC) Environmental Report is inadequate under the National Environmental Policy Act (NEPA) for failure to discuss the environmental impacts of spent fuel pool leakage, spent fuel pool fires, and the lack of a spent fuel repository. The contention is largely based on the June 8, 2012, decision of the United States Court of Appeals for the District of Columbia Circuit in State of New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012). The NRC Staff and FENOC filed Answers to the motion on August 2, 2012 and August 3, 2012 respectively.²

¹ Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste (July 9, 2012).

² See NRC Staff's Answer to Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station (Aug. 2, 2012); FENOC's Answer Opposing New Contention Temporary Storage and Ultimate Disposal of Nuclear Waste at Davis-Besse Nuclear Power Station (Aug. 3, 2012).

Intervenors' replies to these answers are currently due on August 9, 2012 and August 10, 2012 respectively.³

On August 7, 2012, however, the Commission issued CLI-12-16, which addressed many of the issues concerning temporary storage and ultimate disposal of nuclear waste raised by the intervenors in this docket.⁴ The Commission, citing this proceeding⁵ and numerous other proceedings where similar contentions were filed, exercised its inherent supervisory authority over adjudications, and directed that these contentions—and any related contentions that may be filed in the near term—be held in abeyance pending further Commission order.⁶

Given the Commission's direction in CLI-12-16 that the proceedings before the boards be held in abeyance, the August 9, 2012 and August 10, 2012 deadlines for any replies are suspended.⁷

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 8, 2012

³ See Initial Scheduling Order (June 15, 2011) at 13 (unpublished).

⁴ See Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC __ (slip op.) (Aug. 7, 2012).

⁵ See id. at 5 n.10.

⁶ Id. at 6.

⁷ We note, however, that should the Commission send the waste confidence issue to the Board for decision, intervenors will be given an opportunity to file its reply. See id. at 5 ("To the extent that the NRC takes action with respect to waste confidence on a case-by-case basis, litigants can challenge such site-specific agency actions in our adjudicatory process.").

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FIRST ENERGY NUCLEAR OPERATING)	
COMPANY)	Docket No. 50-346-LR
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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Suspending Procedural Date Related to Proposed Waste Confidence Contention)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk*.

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ORDER (Suspending Procedural Date Related to Proposed Waste Confidence Contention)

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

Dated at Rockville, Maryland
this 8th day of August 2012