

May 8, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of )  
FirstEnergy Nuclear Operating Co. ) Docket No. 50-346-LR  
(Davis-Besse Nuclear Power Station, Unit 1) )  
)

**BEYOND NUCLEAR’S MOTION TO AMEND  
NEPA PLACEHOLDER CONTENTION IN LICENSE RENEWAL  
PROCEEDING FOR DAVIS-BESSE NUCLEAR POWER PLANT**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309(f)(2), Beyond Nuclear moves to amend its placeholder contention, submitted April 22, 2015 (as corrected April 23, 2015). The contention asserts that the U.S. Nuclear Regulatory Commission’s (“NRC’s”) Draft Supplemental Environmental Impact Statement (“Draft SEIS”) for the renewal of the Davis-Besse operating license violates the National Environmental Policy Act (“NEPA”) to the extent that it relies on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”). The Continued Spent Fuel Storage Rule and GEIS are now on appeal to the U.S. Court of Appeals for the D.C. Circuit in *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014).

Beyond Nuclear now seeks to amend the contention for the sole purpose of referencing the Final SEIS for renewal of the Davis-Besse license, which the NRC issued on April 28, 2015. Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 52 Regarding Davis-Besse Nuclear Power Station (NUREG-1437, April 2015). This motion to

amend is timely because it is being filed within thirty days (in fact, within ten days) of issuance of the Final SEIS.

## **II. AMENDED CONTENTION**

### **A. Statement of Amended Contention**

In the Final SEIS for renewal of the Davis-Besse operating license, the NRC proposes to rely on the generic conclusions of the Continued Spent Fuel Storage Rule and GEIS for its analysis of the environmental impacts of spent fuel storage. *Id.* at 6-1 – 6-11. This reliance is also codified in 10 C.F.R. § 51.23(b), which provides that the Continued Spent Fuel Storage GEIS is incorporated by reference into the Davis-Besse DEIS.<sup>1</sup> For all of the reasons stated in Beyond Nuclear et al.’s Comments on the Draft Waste Confidence GEIS, however, the Continued Spent Fuel Storage Rule and GEIS fail to provide the NRC with a lawful basis under NEPA for re-licensing Davis-Besse. As discussed in Beyond Nuclear et al.’s comments on the Rule and GEIS, they suffer from the following failures:

- In blatant violation of NEPA and the Court’s decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by “institutional controls” for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act (“NWPA”), but it also defeats the Court’s purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.
- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule is a licensing action, and therefore it distorts the statement of purpose and need for the rule as relating to administrative rather than environmental concerns. As a result, the GEIS also

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<sup>1</sup> 10 C.F.R. § 51.23(b) states that the Continued Spent Fuel Storage GEIS is deemed incorporated into EISs prepared under 10 C.F.R. § 51.95 (which governs preparation of draft and final supplemental EISs for reactor license renewal).

mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.

- The GEIS' analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk and ignores a range of causes for accidents.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.

The remainder of the contention remains the same as filed on April 22.

### **III. THE AMENDED CONTENTION IS TIMELY PURSUANT TO 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)**

NRC regulations 10 C.F.R. § 2.309(c) and § 2.309(f)(2) call for a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;

- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

Beyond Nuclear's amended contention is timely in relation to the date of the issuance of the Final SEIS, because it is being filed within thirty days of the issuance of the Final EIS. In fact, Beyond Nuclear is filing the amended contention within ten days of April 28, 2015, when the NRC posted the Final SEIS on its website.<sup>2</sup> The Final SEIS is materially different from previous documents because (a) it is the final version of the SEIS, and therefore constitutes the NRC's official decision-making document; and (b) unlike the Draft SEIS, it explicitly references and discusses the Continued Spent Fuel Storage Rule and GEIS at pages 6-1 – 6-11.

#### **IV. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)**

Undersigned attorney Terry J. Lodge certifies that on May 7, 2015, he contacted counsel for FirstEnergy and the NRC Staff in an attempt to obtain their consent to this motion. Counsel for both parties stated that they would oppose the motion.

#### **V. CONCLUSION**

For the reasons stated, Beyond Nuclear respectfully requests that the NRC permit it to amend its contention.

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<sup>2</sup> This motion addresses the issue of timeliness only in relation to the date of NRC's issuance of the Final SEIS. Issues related to the timeliness of the contention in relation to other events are addressed in the Reply by Beyond Nuclear, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Seed Coalition and Southern Alliance For Clean Energy to Oppositions by Applicants and NRC Staff to Motions to Admit New Contentions, which is also being filed today in this proceeding.

Respectfully submitted,

*Signed (electronically) by:*

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