

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman  
Michael F. Kennedy  
Randall J. Charbeneau

In the Matter of

DETROIT EDISON COMPANY

(Fermi Nuclear Power Plant, Unit 3)

Docket No. 52-033-COL

ASLBP No. 09-880-05-COL-BD01

April 24, 2009

ORDER

(Providing Instructions and questions for May 5, 2009 Oral Argument)

In its Order of April 9, 2009, the Board scheduled oral argument on standing and contention admissibility for May 5, 2009, in Monroe, Michigan. This Order includes detailed instructions concerning the conduct of that oral argument.

Argument format

The Board has determined that it need not hear separate argument on Petitioners' standing or any argument on Contentions 2, 4, 9, or 11. The Board will hear argument concerning Petitioners' other contentions. Standing issues that are specific to particular contentions may be addressed in the argument on those contentions.

Each of the contentions on which the Board will hear argument will be considered separately, except Contentions 1, 6, and 14, which shall be argued together. The Board will begin with argument on contentions 1, 6, and 14, and then proceed to the other contentions in numerical order, from lowest to highest. Unless the participants agree to a different order, the order in which argument will be presented for each contention or group of contentions will be: (1) the Petitioners, (2) the Applicant, and (3) the NRC Staff.

For Contention 10, the Petitioners, the NRC Staff, and the Applicant shall each have five minutes of argument time. No rebuttal will be permitted concerning that contention. As to each

other contention or group of contentions, the Petitioners shall have 15 minutes of argument time, and the NRC Staff and the Applicant shall each have 10 minutes of argument time. The Petitioners may reserve up to 5 minutes of their allotted time for rebuttal. No other rebuttal will be permitted. In the interest of finishing the argument on schedule, the Board will not ordinarily add additional argument time when it asks questions of the parties' representatives. The participants are encouraged to use less than their maximum allotted time when doing so will not jeopardize the effectiveness of their presentations.

#### Substantive questions of interest to the Board

In general, the participants should not repeat arguments already presented in their written filings, but should focus on responding to the Board's questions. To assist the participants in preparing for the argument, the Board has developed the following list of questions. This list is not intended to be exclusive, and the Board expects to ask additional questions of the participants.

#### Contention 1

Does a baseline assessment of environmental conditions in the region near proposed Fermi 3 satisfy the cumulative effects analysis requirements of NEPA and 10 C.F.R. Part 51, specifically as they relate to cumulative and additive effects of discharges into Lake Erie? Would such a baseline assessment include the potential effects of the Davis-Besse facility?

Would license renewal for an existing facility impact baseline conditions near the proposed Fermi 3 facility?

What are the distances between the proposed Fermi 3 reactor and proposed nuclear facilities in Canada (situated on the shores of Lake Erie)?

Are there any significant new federal actions proposed, in addition to Nine Mile Point 3 on the shores of Lake Ontario, which might be important for consideration in review of this license application?

### Contention 3

What anticipated inventory of LLRW will be stored and managed onsite? What, if anything, in the Environmental Report sets forth the Applicant's current plan for offsite shipment and disposal or interim storage of LLRW generated by Fermi 3?

What specific role does 10 C.F.R. § 51.51, Table S-3, play in this contention? Can the contention be litigated without directly or indirectly challenging Table S-3?

What is the current status of LLRW generated by Fermi 2?

The Petitioners state that this contention concerns a NEPA violation, but then assert that it goes beyond environmental consequences to concerns about public and worker safety. If this contention extends beyond the NEPA concern, (1) what is the basis for extending the contention into the broader issue of public and worker safety, and (2) how are these issues addressed in the Application?

### Contention 5

What is the source of the "fast moving plumes of radioactive contamination" that could threaten the Bass Islands Group sole source aquifer?

### Contention 6

The Petitioners claim that global warming will result in a water level decline in Lake Erie and retreat of the shoreline by from thousands of feet to several miles, leaving the plant intake "high and dry." On the other hand, the Applicant has evaluated plant performance under a range of water elevations that includes the range suggested by the Petitioners, and found no significant performance issues. Please explain this apparent contradiction.

Significant quantities of phosphoric acid will be used with the liquid effluent system. Are there estimates of how much will be chemically consumed during operations, and what fraction will be discharged to Lake Erie?

How will discharge of phosphoric acid to Lake Erie from Fermi 3 compare with Fermi 2, and what environmental impacts (for example, algae growth) have been observed from the operation of Fermi 2?

Contention 7

Question for NRC Staff - does a reactor operating license stipulate the maximum quantity of LLRW that can be stored onsite? How is LLRW storage and disposal being dealt with at other licensed facilities since the partial closure of the Barnwell, South Carolina, disposal site?

The Board requests the Applicant be prepared to describe the analysis of worker and public radiological consequences that was performed for the three vent stack configuration.

Contention 8

What are the locations with viable populations of Eastern fox snake at the Fermi site, and how does their proximity compare with the proposed area of construction?

Are the primary wetlands identified onsite located along the northern property boundary, adjacent to Swan Creek?

Is the Eastern fox snake being considered for listing as either threatened or endangered under the federal Endangered Species Act?

Contention 10

The Petitioners do not appear to represent any of the Native American tribes, bands, and First Nations referred to in this contention, or any members of those entities. If that is correct, how is this contention relevant to protecting the asserted interests of the Petitioners, apart from a general interest in having the NRC comply with the law?

Contention 12

Do the Petitioners contend that specific NRC requirements are not addressed in the Emergency Response Plan? If so, what are the specific NRC requirements?

Contention 13

Does the Applicant intend to retire some of its coal-fired power generation facilities? If so, does this support an increased need for baseload electric power?

The Petitioners question the need and uncertainty in power use over the next decade. Is there a real question of the need for additional baseload power over the next few decades?



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 )  
(Combined License) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (PROVIDING INSTRUCTIONS AND QUESTIONS FOR MAY 5, 2009 ORAL ARGUMENT) have been served upon the following persons by Electronic Information Exchange.

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LB ORDER (PROVIDING INSTRUCTIONS AND QUESTIONS  
FOR MAY 5, 2009 ORAL ARGUMENT)

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[Original signed by R. L. Giitter]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 24<sup>th</sup> day of April 2009