

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	Docket No. 52-033-COL
DETROIT EDISON COMPANY	ASLBP No. 09-880-05-COL-BD01
(Fermi Nuclear Power Plant, Unit 3)	Sept. 11, 2009

ORDER

(Establishing schedule and procedures to govern further proceedings)

After reviewing written submissions from the parties' representatives,¹ and having conferred with the parties' representatives during a conference call on September 9, 2009, the Board adopts this Order to govern further proceedings in this litigation.

1. Mandatory disclosures. The Board has previously determined that the hearing in this proceeding will be conducted pursuant to 10 C.F.R. Part 2, Subpart L. On August 19, 2009, the parties' representatives submitted their Joint Motion concerning the mandatory disclosures required by 10 C.F.R. § 2.336 and the hearing file required by 10 C.F.R. § 2.1203. The schedule and disclosure protocol set forth in the Joint Motion shall govern the parties' disclosure obligations under Sections 2.336 and 2.1203.

2. Additional Contentions.

a. Consolidated Briefing. If a party seeks to file a motion or request for leave to file a

¹Joint Motion on Mandatory Disclosures (Aug. 19, 2009) [hereinafter Joint Motion]; Letter from Counsel for Detroit Edison Co. to the Licensing Board re: Proposed Schedule for Fermi 3 COL Proceeding (Sept. 8, 2009); Letter from NRC Staff to Licensing Board (Sept. 8, 2009); Letter from Counsel for Beyond Nuclear et. al to Licensing Board (Sept. 8, 2009).

new or amended contention (timely or untimely), then it shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention under 10 C.F.R. § 2.309(c) (or both), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.

b. Timeliness. Any new or amended contentions should be filed in compliance with 10 C.F.R. § 2.309(f)(2), including but not limited to the requirement Section 2.309(f)(2)(iii) that any new or amended contention must be submitted “in a timely fashion based on the availability of the [new] information.” In general, a proposed new or amended contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the accompanying motion should cover the three criteria of 10 C.F.R. § 2.309(f)(2) and the eight criteria of 10 C.F.R. § 2.309(c) (as well as the six criteria of 10 C.F.R. § 2.309(f)(1)).

However, with respect to new or amended contentions based on new and material information in the Draft Environmental Impact Statement (DEIS) and the Advanced Safety Evaluation Report without Open Items (ASER), a proposed new or amended contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within sixty (60) days of the date when the document containing the new and material information first becomes available. The Board believes a sixty day period is appropriate for new or amended contentions based on the DEIS or the ASER because of the likely length and complexity of those documents, and the fact

that allowing sixty days to file new or amended contentions based on new and material information contained in those documents will not interfere with the schedules set forth in Tables 1 and 2 below.

3. Other scheduling issues. The schedules in Tables 1 and 2 will govern dates, other than those described above, related to the safety and environmental contentions. We have developed two separate schedules because it appears the Final EIS will be issued well before the Final SER, and the Board may therefore proceed with the environmental contentions before the safety contentions if that is in the interest of expediting the proceeding.

TABLE 1

F is the date on which the Final EIS becomes available for review			
Schedule for all environmental contentions if no new or amended environmental contentions are filed.		Schedule for all environmental contentions if new or amended environmental contentions are filed	
F+30	Motions for summary disposition	F+30	Motions for summary disposition
F+70	Written direct testimony		
F+85	Written rebuttal testimony	F+85	Board Order (Order) on admission of new environmental contentions
F+115	Evidentiary Hearing (Hrg.)	Order +14	Complete mandatory disclosures
		Order +30	Motions for summary disposition on any new or amended environmental contentions admitted by the Board
		Order +70	Written direct testimony
		Order +85	Written rebuttal testimony
		Order +115	Evidentiary Hearing (Hrg.)
90 days from Hrg.	Initial decision	90 days from Hrg.	Initial decision

TABLE 2

S is the date on which the Final SER becomes available for review.			
Schedule for safety contention if no new or amended safety contentions are filed.		Schedule for all safety contentions if new or amended safety contentions are filed.	
S+30	Motions for summary disposition	S+30	Motions for summary disposition
S+70	Written direct testimony		
S+85	Written rebuttal testimony	S+85	Board order (Order) on admission of new or amended safety contentions
S+115	Evidentiary hearing		
		Order +14	Complete mandatory disclosures
		Order +30	Motions for summary disposition on any new or amended safety contentions admitted by the Board
		Order +70	Written direct testimony
		Order +85	Written rebuttal testimony
		Order +115	Evidentiary Hearing
90 days from Hrg.	Initial Decision	90 days from Hrg.	Initial decision

4. Motions to modify the schedule. The Board understands that modifications of the schedule may be appropriate based on future developments. Any motion for an extension or enlargement of time or other modification should be filed when the party learns of the facts and circumstances establishing the need for an extension. A party filing such a motion should

first attempt to resolve the issue with the other parties, and if unable to do so must include the certification required by 10 C.F.R. § 2.323(b).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
Sept. 11, 2009

² Copies of this Order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Applicant Detroit Edison Company; (2) Petitioners Beyond Nuclear et al.; and (3) NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
DETROIT EDISON COMPANY)	Docket No. 52-033-COL
)	
(Fermi Nuclear Power Plant, Unit 3))	
(Combined License))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (ESTABLISHING SCHEDULE AND PROCEDURES TO GOVERN FURTHER PROCEEDINGS) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-033-COL
 LB ORDER (ESTABLISHING SCHEDULE AND PROCEDURES
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[Original signed by Linda D. Lewis]
 Office of the Secretary of the Commission

Dated at Rockville, Maryland
 this 11th day of September 2009