

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

Sept. 14, 2009

Notice of Hearing  
(Application for Combined License)

Pursuant to 10 C.F.R. § 2.312, the Board hereby provides notice that a hearing will be conducted in this proceeding. The Board may conduct oral argument,<sup>1</sup> hold pre-hearing conferences,<sup>2</sup> and conduct evidentiary hearings.<sup>3</sup> The public is invited to attend any oral argument, pre-hearing conference, or evidentiary hearing unless otherwise ordered by the Commission.<sup>4</sup> The time and place of hearing will be fixed by subsequent order, with due regard for the convenience of the parties and their representatives, the nature of the proceeding, and the public interest.<sup>5</sup> Notices of these sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room, located at One White Flint,

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<sup>1</sup> 10 C.F.R. § 2.331.

<sup>2</sup> Id. § 2.329.

<sup>3</sup> Id. § 2.1207.

<sup>4</sup> Id. § 2.328.

<sup>5</sup> Id. § 2.312(b).

11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC website,

<http://www.nrc.gov/>

This proceeding concerns an application by the Detroit Edison Company ("DTE" or "Applicant") to the Nuclear Regulatory Commission (NRC) for a combined license (COL) under 10 C.F.R. Part 52 that would authorize DTE to construct and to operate a new boiling water reactor, designated Unit 3, employing the GE-Hitachi Economic Simplified Boiling Water Reactor (ESBWR) on its existing Fermi nuclear facility site near Newport City in Monroe County, Michigan. By hearing petition received March 9, 2009, Petitioners jointly sought to intervene and to challenge various aspects of DTE's COL Application (COLA).<sup>6</sup>

On July 31, 2009, the Board issued a Memorandum and Order in which it ruled that Petitioners have standing to participate in this proceeding and partially admitted four of their contentions.<sup>7</sup> Based on those rulings, the Board granted Petitioners' request for a hearing and admitted them as parties in this proceeding. The Board subsequently ruled that the procedures of 10 C.F.R. Part 2, Subpart L, shall be used for the admitted contentions.<sup>8</sup>

The admitted contentions, as narrowed by the Board, are as follows:

Contention 3 This contention alleges that DTE's Environmental Report for Fermi 3 is deficient in discussing the Applicant's plans for management of Class B and C low-level radioactive wastes in light of the current lack of a licensed off-site disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term.

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<sup>6</sup> The Petitioners are Beyond Nuclear, Citizens for Alternatives to Chemical Contamination (CACC), Citizens Environmental Alliance of Southwestern Ontario (CEASO), Don't Waste Michigan (DWM), the Sierra Club, and numerous individuals.

<sup>7</sup> Detroit Edison Co. (Combined License Application for Fermi Unit 3), LBP-09-16, 69 NRC \_\_ (July 31, 2009).

<sup>8</sup> Licensing Board Order (Identifying Hearing Procedures and Scheduling Conference Call) (Aug. 12, 2009) (unpublished); see also 10 C.F.R. §§ 2.1200-1213.

Contention 5 This contention asserts omissions from the COLA of data related to hydrological radionuclide transport, including measurements of distribution coefficients, retardation factors, and porosity. The contention as admitted also alleges that modeled concentrations of a number of radionuclides calculated at potential exposure locations exceed effluent concentration limits as specified in 10 C.F.R. Part 20 Appendix B, Table 2.

Contention 6 This contention challenges the adequacy of the water quality analysis in the Environmental Report regarding the potential for increased algal blooms and the proliferation of a newly identified species of harmful algae in the western Lake Erie basin.

Contention 8 This contention alleges that the Environmental Report fails to adequately assess the project's impacts on the eastern fox snake, a species listed as threatened by the Michigan Department of Natural Resources, and to consider alternatives that would reduce or eliminate those impacts.

The Administrative Dispute Resolution Act of 1996 (ADR Act) encourages the use of alternative dispute resolution by federal agencies.<sup>9</sup> The parties are encouraged to explore voluntary processes, including settlement talks with or without a neutral mediator, to resolve the issues in this case. Upon request, a settlement judge from the ASLBP could be appointed.<sup>10</sup>

Additionally, as provided in 10 C.F.R. § 2.315(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should do so either by (1) mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention:

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<sup>9</sup> 5 U.S.C. §§ 571-584.

<sup>10</sup> 10 C.F.R. § 2.338(b).

Rulemakings and Adjudications Staff, with a copy to the Chairman of this Licensing Board at Mail Stop T-3E9, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; (2) e-mail to the Office of the Secretary at [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), with a copy to this Board (c/o Ashley Prange, [Ashley.Prange@nrc.gov](mailto:Ashley.Prange@nrc.gov)); or (3) fax to the Office of the Secretary at 301-415-1101 (facsimile verification number: 301-415-1966), with a copy to the Board (c/o Ashley Prange) at 301-415-5599 (facsimile verification number: 301-415-7550). At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Fermi facility. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room and on the NRC website, <http://www.nrc.gov/>

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>11</sup>

/RA/

Ronald M. Spritzer, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
Sept. 14, 2009

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<sup>11</sup> 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.

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF HEARING (APPLICATION FOR COMBINED LICENSE) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Evangeline S. Ngbea]  
 Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 14<sup>th</sup> day of September 2009