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December 3, 2012

BY ELECTRONIC INFORMATION EXCHANGE

Administrative Judge Ronald M. Spritzer
Administrative Judge Anthony J. Baratta
Administrative Judge Randall J. Charbeneau
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Mail Stop: T-3F23
Rockville, MD 20852

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

RE: Proposed Schedule for Fermi 3 COL Proceeding

Dear Administrative Judges:

The Detroit Edison Company appreciates the opportunity to address the questions raised in the Board Order (Scheduling Conference Call) of November 21, 2012 (“Order”). The Order invited the parties to provide their views regarding: (1) whether the evidentiary hearing on safety issues should be held at an earlier date than provided in the Board’s September 11, 2009 Scheduling Order; (2) whether the Board should hold one evidentiary hearing on all safety and/or environmental contentions; and (3) the date and location of the evidentiary hearing(s).¹

The parties have conferred regarding the Board’s questions, but were unable to reach agreement on the first two items. The responses below therefore represent the views of Detroit Edison. Nonetheless, the NRC Staff has indicated that it does not object to Detroit Edison’s proposed approach. The NRC Staff is prepared to conduct the hearing on Contention

¹ The Board also solicited feedback on when the NRC Staff anticipates issuing the FEIS, the Advanced SER with no open items, and the Final SER. Detroit Edison defers to the NRC Staff on these matters.

15 on an expedited schedule as described below, and is amenable to a single evidentiary hearing on the two remaining safety and environmental issues.

Timing of Evidentiary Hearing on Safety Issues

Contention 15 on Quality Assurance (“QA”) is the only remaining safety contention. The evidentiary hearing on that contention should be held prior to issuance of the Final Safety Evaluation Report (“FSER”), rather than continuing to defer the issue until the FSER is issued as contemplated in the earlier Scheduling Order. The issues involved in Contention 15 are ripe for hearing at present. The NRC Staff has accepted Detroit Edison’s corrective actions for the Notice of Violation that was the basis for Contention 15. And, the NRC Staff has completed and made available the Advanced Safety Evaluation Report (“ASER”) with no open items for Chapter 17, which addresses QA.² Further, none of the outstanding issues in the NRC Staff’s ongoing safety review relate to QA. The NRC Staff agrees that all issues related to Contention 15 have been resolved.³ There is no reason to delay the hearing.

The factual circumstances that are the subject of Contention 15 took place, for the most part, between 2007 and 2009 as illustrated by the timeline below:

Event	Date
Fermi 3 COLA Project Begins	January 2007
COLA Application	September 18, 2008
NRC Staff Issues QA NOV	October 5, 2009
Intervenors File Contention 15	November 6, 2009
NRC Staff Close-Out of QA NOV	June 4, 2010
ASER for Chapter 17	September 26, 2011

² “NRC Staff – Advanced Final Safety Evaluation Report for Chapter 17, ‘Quality Assurance,’” dated September 26, 2011 (ADAMS Accession No. ML112560382). The NRC Staff does not issue an ASER for all chapters as a single document (like it does for a Draft Environmental Impact Statement). Instead, the NRC Staff reviews the FSAR on a chapter-by-chapter basis and presents the results on a chapter-by-chapter basis to the Advisory Committee for Reactor Safeguards (“ACRS”). Once the ACRS review is complete, the NRC Staff’s review for a particular chapter is also complete. Like the NRC Staff, the ACRS has already completed its review of Chapter 17.

³ “NRC Staff Answer to Applicant’s Motion for Summary Disposition of Contention 15,” dated May 2012, at 1.

Witnesses and experts for Detroit Edison, its contractors, and the NRC Staff may change jobs or assignments (if they haven't already), and may cease involvement in the project entirely. Holding a hearing in the near term will benefit all parties by maximizing the likelihood that witnesses are still available to testify, and by ensuring that the facts surrounding the contention can still be readily recalled by those involved. Holding a hearing on Contention 15 now, rather than waiting for the FSER, will therefore promote development of a comprehensive and complete record.

Furthermore, resolution of the issues involved in Contention 15 will reduce uncertainty associated with the overall NRC licensing and hearing processes for Fermi 3. In the event that resolution of Contention 15 requires additional work or analysis by Detroit Edison, moving forward with the hearing process on this issue would reduce the potential for delay later. If, as the Intervenors assert, Detroit Edison has failed to satisfy QA requirements, then there is every reason to determine that now so that Detroit Edison can immediately address and resolve any issues. It would be wasteful of Detroit Edison, NRC Staff, Intervenors, and Board resources to delay a hearing on Contention 15 until after all NRC reviews are complete, only to then litigate whether the initial inputs into the safety review were appropriate. There is also no countervailing reason to wait for issuance of the FSER to litigate Contention 15, since the FSER will provide no new information on QA issues beyond what is already available.

Lastly, deferring the hearing on Contention 15 until after the FSER would unnecessarily place the hearing on the "critical path" for combined license issuance without a corresponding benefit in effectiveness or efficiency. Conducting a hearing on Contention 15 in the near term is consistent with 10 C.F.R. § 2.329(b)(1), which encourages Licensing Boards to consider ways to expedite completion of the proceeding. The Commission's 1998 Policy Statement on the Conduct of Agency Adjudications also indicates that Boards should exercise their authority "to shorten the filing and response times set forth in the regulations to the extent practical in a specific proceeding."⁴ And, unlike hearings on environmental issues, there is no regulatory bar to holding a hearing on Contention 15 prior to issuance of the FSER.

For all of these reasons, it is Detroit Edison's position that the Board should hold the hearing on Contention 15 prior to the FSER, on a schedule proposed in Attachment 1. Holding a hearing on Contention 15 on this schedule will ensure a fair hearing process and enable development of an informed adjudicatory record, while avoiding unnecessary delay.

Number of Evidentiary Hearings

The Board should hold a single evidentiary hearing on the presently-admitted safety and/or environmental contentions. The issues involved in the two remaining contentions, Contentions 8 and 15, have been briefed previously in response to motions for summary

⁴ "Policy on Conduct of Adjudicatory Proceedings; Policy Statement," 63 Fed. Reg. 41872, 41873 (Aug. 5, 1998).

disposition. Disclosures have been made and the parties have developed witness positions and testimony. There should therefore be no extraordinary burden associated with addressing both issues simultaneously. And, conducting a single hearing is consistent with Commission policy to expedite hearings and avoid unnecessarily protracted litigation.

Detroit Edison therefore proposes in Attachment 1 a single schedule, with definite deadlines, to govern Contentions 8 and 15. To alleviate any resource concerns, the proposed hearing schedule has been modified slightly relative to the Model Milestones in Part 2 and to the existing Scheduling Order, to give the parties more time to prepare their case.

If the Intervenor file new proposed contentions based on the FEIS, those contentions would be addressed under the current schedule for new/amended contentions, but on a separate track from Contentions 8 and 15. This will permit development of a fixed, date-specific schedule for evidentiary hearings on Contentions 8 and 15, rather than a “floating” schedule dependent on whether the Intervenor file new contentions or the timing of a Board decision on any proposed new contentions.⁵ Establishing a fixed schedule for the known issues (Contention 8 and 15) well in advance will allow all parties and the Board to better allocate resources and plan for the evidentiary hearing in the next year.

Location of Evidentiary Hearings

Detroit Edison presumes that the evidentiary hearing will be held in the vicinity of the proposed Fermi 3 (*e.g.*, Monroe, Michigan) and has no objection to that location.

Sincerely,

/s/ signed electronically by

Tyson R. Smith

cc: EIE Service List

⁵ Under Detroit Edison’s proposal, there would be one hearing on Contentions 8 and 15 and then, only if necessary, a second hearing on newly-admitted contentions.

Attachment 1: Proposed Schedule for Fermi 3 Proceeding

Schedule for Contentions 8 & 15		
Activity	Deadline	Comment
<i>Publication date for FEIS is January 18, 2013</i>		
Direct Written Testimony Due on Contentions 8 & 15	March 29, 2013	F+70 (same as current schedule)
Rebuttal Testimony Due on Contentions 8 & 15	April 19, 2013	F+91 (three weeks after direct; current schedule is F+85)
Motions in Limine, Proposed Questions for Board, and Motions for Cross-Examination Due on Contentions 8 & 15	May 10, 2013	F+112 (three weeks after rebuttal; not in current schedule)
Evidentiary Hearing	Late-June/Late-July 2013	F+? (current schedule is F+115)*

Schedule for New Environmental Contentions (if any)		
Activity	Deadline	Comment
<i>Publication date for FEIS is January 18, 2013</i>		
New Contentions, If Any, Due	February 18, 2013	F+30 (same as current schedule)
Summary Disposition on Contention 8, If Any, Due	February 18, 2013	F+30 (same as current schedule)
Board Order on Admission of New Environmental Contentions	April 15, 2013	F+85 (same as current schedule)
Complete Mandatory Disclosure	April 29, 2013	Order+14 (same as current schedule)
Motions for Summary Disposition on New/Amended Environmental Contentions	May 15, 2013	Order+30 (same as current schedule)
Written Direct Testimony on New/Amended Contention	June 24, 2013	Order+70 (same as current schedule)
Written Rebuttal Testimony on New/Amended Contention	July 15, 2013	Order+90 (five days longer than current schedule)
Motions in Limine, Proposed Questions for Board, and Motions for Cross-Examination	July 29, 2013	Order+104 (not in current schedule)
Evidentiary Hearing	August/September 2013	

*Detroit Edison notes that due to conflicts caused by other demands, there are certain dates in the first half of June and in the first half of July on which it could not support an evidentiary hearing.