

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board**

In the Matter of:)	
)	Docket No. 52-033
The Detroit Edison Company)	
(Fermi Nuclear Power Plant, Unit 3))	March 27, 2013
	;	
*	*	*
	*	*

**MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF
TESTIMONY FOR ADJUDICATION OF CONTENTION 15**

Now come Intervenors Beyond Nuclear, *et al.*¹ (hereinafter “Intervenors”), by and through counsel, and move to extend time for the prefiling of direct written testimony from all parties from March 29, 2013 until April 29, 2013, and to adjust subsequent testimony-related filing deadlines accordingly, for Contention 15, the Quality Assurance contention.

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MEMORANDUM IN SUPPORT OF MOTION

In its December 12, 2012, order (ASLBP No. 09-880-05-COL-BD01), the Atomic Safety and Licensing Board instructed that direct testimony related to Contentions 8 and 15 be filed on

¹In addition to Beyond Nuclear, the Intervenors include: Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don’t Waste Michigan, Sierra Club (Michigan Chapter), Keith Gunter, Edward McArdle, Henry Newnan, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman.

or before March 29, 2013, that rebuttal testimony by filed on or before April 29, 2013, and that motions *in limine*, proposed questions for the Licensing Board, and motions for cross-examination be filed on or before May 15, 2013.

Intervenors request extension/escheduling of these dates as to Contention 15, only,² for several reasons outlined below.

In their desire for their expert witness to have access to proprietary information about quality assurance in the planning for the Fermi 3 nuclear power plant, on February 25, 2013 Intervenors provided DTE with executed nondisclosure agreements. They used the form that was later approved by the ASLB on March 13, 2013. Counsel for DTE declined to turn over the information in the absence of an approved Board order governing nondisclosure. Admittedly, Intervenors could have finalized nondisclosure orders from the ASLB earlier, and to the extent they have contributed to this conundrum, counsel for Intervenors apologizes to the Board and to the parties. At any rate, counsel for DTE, the NRC Staff and Intervenors proceeded to negotiate the terms of a proposed nondisclosure agreement and accompanying order, and jointly moved for its acceptance via filing of a joint motion on February 28, 2013.

Counsel for Intervenors mistakenly assumed that approval of the terms and of the nondisclosure agreement form for persons seeking access to the proprietary information would be approved more quickly than turned out to be the case. The ASLB approved its order and the nondisclosure agreement form only March 13, 2013, at which time, DTE provided the information to Intervenors.

Intervenors had contracted for their expert consultant on Contention 15, Arnold Gund-

²Intervenors proposed to adhere to the existing dates for testimony and motion practice related to testimony on Contention 8 (litigation over the Eastern Fox Snake).

ersen, a nuclear engineer, to take up this project throughout the first two weeks of March and during the week of March 29, 2013. The delay in formalization of the protective order covered approximately the first two weeks of March and had the (unintentional) effect of curtailing Intervenor's expert's available time before March 29 to complete his preparation of testimony.

Intervenors suggest that there is nothing especially compelling about the current schedule of case events in this licensing case which should bar consideration of their rescheduling request. The NRC Commission has deferred finalization of all pending licensing actions, including this COLA proceeding, until late 2014, the earliest time at which matters related to high-level waste confidence are expected to be concluded.³ The SER for Fermi 3, which may become the source of further litigation issues, is not yet completed and available for public scrutiny, and litigation related to that is likely to be relegated to 2014.

The propriety information files for Contention 15 were not provided to Intervenor and their expert in a term-searchable format, nor are they in a format which lends itself to effective cross-document search and classification. This unanticipated access obstacle has caused considerable difficulty and required extra time commitment by all persons who have signed nondisclosure agreements. Additionally, Intervenor's counsel represents that problems of interface between the software of the proprietary files, and their expert's up-to-date MacIntosh computer systems, have required that Fairewinds Associates, Mr. Gundersen's firm, to consult with an information technology professional to clear up problems with the stability of their computers when opening the proprietary files. This technological access problem is not completely resolved, and consequently Intervenor may yet have to request more time beyond April 29 for

³Intervenors timely pled a contention related to inadequacy of the then-waste confidence policy of the NRC in 2009.

their expert to complete his investigation and findings.

Also, Mr. Gundersen and his paralegal, who is his spouse, Margaret, will not be available to work on this consulting project from April 1 through 15, 2013, owing to long-standing plans, including flight arrangements, for a vacation to visit with friends and family during that period. This facts of the vacation and some of the technological difficulties are articulated in the attached declaration from Margaret Gundersen.

In its December 12, 2012 order, the Board stated that “ if a party will not be able to comply with a filing date, it should promptly file a motion with the Board pursuant to 10 C.F.R. §2.307(a), and include either an affidavit or other appropriate documentation justifying an extension of time. In filing any motion related to scheduling, the parties should also be careful to comply with the requirements of 10 C.F.R. §2.323(b).”

Intervenors consulted on this request with counsel for DTE and the NRC Staff pursuant to 10 C.F.R. §2.323(b). On March 13, 2013, DTE’s counsel stated the following:

We don’t believe that an extension is warranted given the length of time that you’ve had available to obtain the documents and the fact that we have identified certain Contention 15 documents as proprietary in monthly disclosures going back 2+ years. Also, the scheduled deadlines have been set for some time, and our clients, experts, and attorneys have already arranged their schedules accordingly. That said, we would not object to a request to extend the deadlines for Contention 15 for up to two weeks (this would also result a corresponding extension of the deadline for rebuttal testimony and motions *in limine*/cross-examination plans). We would object to any request to extend the deadline for Contention 8.

Counsel for the NRC Staff responded on March 13, 2013 to Intervenors as follows:

I spoke to the NRC witnesses, and we have no objection to an extension of either two weeks or four weeks to the deadlines related to the QA contention provided the same extension is granted to all parties.

However, we object to any extension to the deadlines related to the fox snake contention.

Intervenors accordingly believe that there is not sharp disagreement to the requested time

extension and reschedulings. They further assert that the ASLB well understands the complexities of coordinating preparation of testimony and its filing, pre-hearing, and that the Board is committed to facilitating the litigation of matters on their merits when it is warranted.

WHEREFORE, Intervenors respectfully request that the ASLB allow rescheduling of testimonial matters for Contention 15 as set forth hereinabove.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF TESTIMONY FOR ADJUDICATION OF CONTENTION 15” have been served upon the following persons via Electronic Information Exchange this 27th day of March, 2013:

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