

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

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Dr. Anthony J. Baratta
Dr. 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

May 15, 2013

NOTICE OF HEARING

(Notice of Evidentiary Hearing and Opportunity to
Provide Oral and Written Limited Appearance Statements)

Pursuant to 10 C.F.R. § 2.312, the Atomic Safety and Licensing Board hereby provides notice that it will convene an evidentiary session to receive testimony and exhibits in the contested portion of this proceeding. In addition, the Board gives notice that, in accordance with 10 C.F.R. § 2.315(a), it will entertain oral and written limited appearance statements from members of the public in connection with this proceeding.

A. Matters to be Considered

This combined license (“COL”) contested proceeding involves the application of DTE Electric Company (formerly the Detroit Edison Company) (“Applicant”) under 10 C.F.R. Part 52, Subpart C, to construct and to operate a GE-Hitachi Economic Simplified Boiling Water Reactor (“ESBWR”), designated Unit 3, on its existing Fermi nuclear facility site in Monroe County, Michigan.¹

¹ Letter from Jack M. Davis, DTE, to NRC, Detroit Edison Company Submittal of a Combined License Application for Fermi 3 (NRC Project No. 757) (Sept. 18, 2008) (ADAMS Accession No. ML082730763).

This evidentiary hearing will consider two contentions.

i. Contention 8

Contention 8, as restated by the Board, alleges that

the ER fails to adequately assess [Fermi Unit 3]'s impacts on the eastern fox snake and to consider alternatives that would reduce or eliminate those impacts.²

ii. Contention 15 (including subparts A & B)

Contention 15, as restated by the Board, alleges that

Detroit Edison (DTE) failed to comply with Appendix B to 10 C.F.R Part 50 to establish and implement its own quality assurance (QA) program when it entered into a contract with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) application activities and to retain overall control of safety-related activities performed by B&V. This violation began in March 2007 and continued through at least February 2008. Further, DTE failed to complete internal audits of QA programmatic areas implemented for the Fermi 3 COL Application, and DTE also has failed to document trending of corrective actions to identify recurring conditions adverse to quality since the beginning of the Fermi Unit 3 project in March 2007.

Contention 15A:

These deficiencies adversely impact the quality of the safety related design information in the FSAR that is based on B&V's tests, investigations, or other safety-related activities. Because the NRC may base its licensing decision on safety-related design information in the FSAR only if it has reasonable assurance of the quality of that information, it may not lawfully issue the COL until the deficiencies have been adequately corrected by the Applicant, or until the Applicant demonstrates that the deficiencies do not affect the quality of safety-related design information in the FSAR.

Contention 15B:

Although DTE claims that in February 2008 it adopted a QA program that conforms to Appendix B, DTE has failed to implement that program in the manner required to properly oversee the safety-related design activities of B&V. This demonstrates an ongoing lack of commitment on the part of DTE's management to compliance with NRC QA regulations. The NRC cannot support a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety until DTE provides satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC

² See Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227, 286 aff'd, CLI-09-22, 70 NRC 932 (2009).

regulations.³

B. Date, Time, and Location for Evidentiary Hearing

The evidentiary hearing will commence at 9:30 AM, Eastern Daylight Time (EDT) on Wednesday, October 30, 2013, and continue through Friday, November 1, 2013, if necessary, in the Monroe County Courthouse's Board Meeting Room, 125 East Second Street, Monroe, MI 48161.

Members of the public and representatives of the media are welcome to attend and observe this evidentiary hearing. However, signs, banners, posters, and displays are prohibited in accordance with NRC policy.⁴

All individuals attending the evidentiary hearing are advised that security measures will be employed at the entrance to the facility. As such, all individuals attending the evidentiary hearing should bring at least one form of government issued photo identification, refrain from bringing any unnecessary hand-carried items that might need to be examined individually, and allow sufficient time for security screening.

C. Date, Time, and Location of Oral Limited Appearance Statement Sessions

Two oral limited appearance statement sessions regarding this evidentiary hearing proceeding will be held Tuesday, October 29, 2013, from 1:00 PM to 3:00 PM EDT (first limited appearance session), and from 7:00 PM to 8:30 PM (second limited appearance session) at Monroe County Community College, La-Z-Boy Center, Meyer Theater, 1555 S. Raisinville Road, Monroe, MI 48161.

Members of the public and representatives of the media are welcome to attend, observe, and participate in these oral limited appearance statement sessions, as outlined below. As required by NRC policy, signs, banners, posters, and displays not larger than 18" x 18" will be

³ See Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP-10-9, 71 NRC 493, 510-11 (2010).

⁴ See Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 Fed. Reg. 31,719 (June 12, 2001) [hereinafter Meeting Security Guidelines].

permitted at the oral limited appearance statement session, but may not be waved or held over one's head. Any sign, banner, poster or display affixed to a stick, or similar device, will not be permitted at the oral limited appearance statement sessions.⁵

All individuals attending the oral limited appearance statement sessions are advised that security measures will be employed at the entrance to the facility. As such, all individuals attending the oral limited appearance statement sessions should bring at least one form of government issued photo identification, refrain from bringing any unnecessary hand-carried items that might need to be examined individually, and allow sufficient time for security screening.

D. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or representative of a party, to this evidentiary hearing will be permitted to make an oral statement in regards to his or her position on a matter of concern relating to the proceeding. Though these statements do not constitute testimony or evidence, they nonetheless may aid the Board and/or the parties in their consideration of the issues involved in this evidentiary hearing.

Oral limited appearance statements will be entertained during the hours specified above. In the event that all scheduled and unscheduled speakers present at the session have made a presentation, the Board reserves the right to terminate the sessions prior to the ending time listed above.

The time allotted for each limited appearance statement will be five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section E below and/or the number or persons present at the designated time, so as to ensure that everyone will have an opportunity to speak.

⁵ See Meeting Security Guidelines.

E. Submitting a Request to Make an Oral Limited Appearance Statement

Although a request to make an oral limited appearance statement may be submitted either prior to or at the limited appearance sessions, those who have submitted timely written requests prior to the limited appearance sessions will be given priority over those who have not filed such requests. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5:00 PM EDT on Friday, October 18, 2013.

Written requests to make an oral statement should be submitted to:

Mail: Administrative Judge Ronald M. Spritzer
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-5599

Email: onika.williams@nrc.gov and ronald.spritzer@nrc.gov

F. Submitting Written Limited Appearance Statements

As provided in 10 C.F.R. § 2.315(a), any person not a party, or a representative of a party, to the proceeding may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may assist the Board or the parties in their consideration of the issues in this proceeding.

A written limited appearance statement may be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary
Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20444-0001

Fax: (301) 415-1101

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge Ronald M. Spritzer
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission

Fax: (301) 415-5599

E-mail: ronald.spritzer@nrc.gov

G. Availability of Documentary Information Regarding the Proceeding

Applicant's application, and various NRC Staff documents relating to the application, are available on the NRC website at <http://www.nrc.gov/reactors/new-reactors/col/fermi.html>. These and other documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or electronically from the publicly-available records component of the NRC's document system (ADAMS). ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).⁶ Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397-4209 or (301) 415-4737 (available between 8:00 AM and 4:00 PM Eastern Time, Monday through Friday except federal holidays), or by e-mail to pdr@nrc.gov.

H. Conference Call

The Board intends on holding a conference call with the parties in early October 2013 to

⁶ Some documents determined by the NRC Staff to contain "sensitive" information are publicly available only in redacted form; non-sensitive documents are publicly available in their complete form. In addition, some documents that may contain proprietary information may be publicly available only in redacted form.

discuss further administrative details regarding this evidentiary hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 15, 2013

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 **NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Oral and Written Limited Appearance Statements)** have been served upon the following persons by Electronic Information Exchange.

Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ronald M. Spritzer, Chair
Administrative Judge
E-mail: Ronald.Spritzer@nrc.gov

Anthony J. Baratta
Administrative Judge
E-mail: Anthony.Baratta@nrc.gov

Randall J. Charbeneau
Administrative Judge
E-mail: Randall.Charbeneau@nrc.gov

Kirsten Stoddard, Law Clerk
E-mail: kirsten.stoddard@nrc.gov

James Maltese, Law Clerk
E-mail: james.maltese@nrc.gov

Onika Williams, Law Clerk
Email: onika.williams@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Detroit Edison Company
One Energy Plaza, 688 WCB
Detroit, Michigan 48226
Bruce R. Matters, Assistant General Counsel
E-mail: matersb@dteenergy.com

Docket No. 52-033-COL

NOTICE OF HEARING (Notice of Evidentiary Hearing and Opportunity to Provide Oral and Written Limited Appearance Statements)

Winston & Strawn, LLP
 1700 K Street, NW
 Washington, DC 20006-3817
 Counsel for the Applicant
 David Repka, Esq.
 Rachel Miras-Wilson, Esq
 Tyson R. Smith, Esq.
 Noelle Formosa, Esq.
 Carlos L. Sisco, Senior Paralegal

E-mail:

drepka@winston.com
trsmith@winston.com
rwilson@winston.com
nformosa@winston.com
CSisco@winston.com

Pillsbury Winthrop Shaw Pittman, LLP
 2300 N Street, NW
 Washington, DC 20037-1122
 Counsel for Progress Energy
 Robert Haemer, Esq.
 E-mail: robert.haemer@pillsburylaw.com

Beyond Nuclear, Citizens for Alternatives to
 Chemical Contamination, Citizens
 Environmental, Alliance of Southwestern
 Ontario, Don't Waste Michigan, Sierra Club
 et al.
 316 N. Michigan Street, Suite 520
 Toledo, OH 43604-5627
 Terry J. Lodge, Esq.
 Michael J. Keegan, Esq.
 E-mail: tjlodge50@yahoo.com
 E-mail: mkeeganj@comcast.net

U.S. Nuclear Regulatory Commission
 Office of the General Counsel
 Mail Stop O-15D21
 Washington, DC 20555-0001
 Marcia Carpentier, Esq.
 Sara Kirkwood, Esq.
 Robert M. Weisman, Esq.
 Anthony Wilson, Esq.
 Andrea Silvia, Esq.
 Patrick Moulding, Esq.
 Michael Spencer, Esq.
 Catherine Scott, Esq.
 Megan Wright, Esq.
marcia.carpentier@nrc.gov
sara.kirkwood@nrc.gov
robert.weisman@nrc.gov
anthony.wilson@nrc.gov
andrea.silvia@nrc.gov
Patrick.Moulding@nrc.gov
michael.spencer@nrc.gov
catherine.scott@nrc.gov
megan.wright@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

Beyond Nuclear
 Reactor Oversight Project
 6930 Carroll Avenue Suite 400
 Takoma Park, MD 20912
 Paul Gunter, Director
 E-mail: paul@beyondnuclear.org

[Original signed by Clara I. Sola]
 Office of the Secretary of the Commission

Dated at Rockville, Maryland
 This 15th day of May 2013