

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

August 19, 2013

ORDER

(Listing Issues for the Prehearing Teleconference and Clarifying that No Cross-Examination Will Be Permitted at the Evidentiary Hearing)

The Board previously scheduled a prehearing conference call on Monday, September 16, 2013, at 10:00 A.M. Eastern Daylight Time (EDT) to discuss procedural matters related to the evidentiary hearing that will be held in Monroe, Michigan in October 2013.¹ This Order advises the parties of the primary issues the Board intends to address, which include:

1. Venue logistics
2. Security procedures
3. Proposed exhibits
 - a. Proposed exhibit lists
 - b. Procedure for moving exhibits into evidence
 - c. Stipulations as to admissibility of exhibits
4. Opening and Closing Statements

¹ See 78 Fed. Reg. 29,781 (May 21, 2013).

5. Witness questioning

- a. Order of questioning
- b. Questioning format
- c. Proposed questions for the Board

6. Deadline for Proposed Transcript Corrections

7. Deadline for Proposed Findings of Fact and Conclusions of Law

8. Procedures to be used during the evidentiary hearing to ensure compliance with the applicable provisions of the Protective Order in this case, including but not limited to the need for some part of the evidentiary hearing to be conducted in camera.

9. Issues of concern to the parties not identified above and not otherwise covered by the Board.

The Board is in the process of reviewing the pre-filed testimony and, if it determines that it has no questions of some witnesses, it will notify the parties at or before the prehearing conference that the attendance of such witnesses is not necessary. The Board expects that all witnesses (i.e., all persons whose written testimony has been filed in this proceeding) other than those whose attendance the Board has found unnecessary will be available at the evidentiary hearing for questioning by the Board.

The Board expects the parties to stipulate, wherever possible, to the admissibility of exhibits. Objections to admissibility should be raised only if there is a genuine dispute as to the authenticity of a document, or if a party believes a document to be totally irrelevant to any issue in this proceeding. Arguments concerning the weight the Board should give to an exhibit are not a ground for objecting to its admission into evidence, and a party does not waive such arguments by agreeing that the exhibit may be admitted.

Intervenors have submitted to the Board in camera a "Proposed Cross-Examination Plan and Questions for ASLB to put to NRC and DTE Witnesses on Contention 15," and a

supplement to that filing.² Intervenors also submitted a cross-examination plan concerning Contention 8,³ which they subsequently clarified was not intended to request permission to conduct cross-examination themselves, but rather to propose questions for the Board to ask of DTE and NRC witnesses.⁴ Similarly, the Contention 15 filings do not attempt to show that cross-examination by Intervenors is necessary to ensure the development of an adequate record for decision, as would be required for the Board to authorize Intervenors to conduct cross-examination in this proceeding under 10 C.F.R. Subpart L.⁵ The Board therefore interprets the Contention 15 filings, like Intervenors' proposed cross-examination plan concerning Contention 8, as proposed questions for the Board to propound to DTE and NRC witnesses. Accordingly, no party will be permitted to conduct cross-examination at the evidentiary hearing. The examination of witnesses will be conducted solely by the Board, with appropriate consideration given to the proposed questions submitted by the parties.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 19, 2013

² Intervenors' Proposed Cross-Examination Plan and Questions for ASLB to put to NRC and DTE Witnesses on Contention 15 (June 17, 2013); Intervenors' Supplemental Cross-Examination Plan and Questions for ASLB to put to NRC and DTE Witnesses on Contention 15 (June 17, 2013).

³ Intervenors' Request to Allow Cross-Examination and Proposed Cross-Examination Plan for Contention 8 (May 15, 2013).

⁴ Intervenors' Notice of Withdrawal of Request to Allow Cross-Examination on Contention 8 (June 11, 2013).

⁵ 10 C.F.R. §2.1204(b)(3).

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)
(Combined License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Listing Issues for the Prehearing Teleconference and Clarifying that No Cross-Examination Will Be Permitted at the Evidentiary Hearing)** have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-033-COL

ORDER (Listing Issues for the Prehearing Teleconference and Clarifying that No Cross-Examination Will Be Permitted at the Evidentiary Hearing)

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

Dated at Rockville, Maryland
 This 19th day of August 2013