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**NUCLEAR REGULATORY COMMISSION**

Title: Detroit Edison Company

Docket Number: 52-033-COL

ALSBP Number: 09-880-05-COL-BD01

Location: teleconference

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of:	:	
DETROIT EDISON COMPANY	:	Docket No. 52-033-COL
	:	ASLBP No.
(Fermi Nuclear Power	:	09-880-05-COL-BD01
Plant, Unit 3)	:	

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Monday, September 16, 2013

Teleconference

BEFORE:

RONALD M. SPRITZER, Chair

DR. ANTHONY J. BARATTA, Administrative Judge

DR. RANDALL J. CHARBENEAU, Administrative Judge

1 APPEARANCES:

2 On Behalf of the Applicant:

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4 TYSON R. SMITH, ESQ.

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9 AND

10 JON P. CHRISTINITIS, ESQ.

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12 PETER SMITH, Director of Nuclear

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14 of: DTE Electric Company

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16 Detroit, Michigan 48226

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18 On Behalf of the Nuclear Regulatory

19 Commission:

20 MARCIA CARPENTIER, ESQ.

21 KEVIN ROACH, ESQ.

22 ANTHONY WILSON, ESQ.

23 MEGAN WRIGHT, ESQ.

24 NICHOLAS KOONTZ

25 of: U.S. Nuclear Regulatory Commission

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5  
6 On Behalf of Beyond Nuclear, Citizens for  
7 Alternatives to Chemical Contamination, Citizens  
8 Environmental, Alliance of Southwestern Ontario,  
9 Don't Waste Michigan, Sierra Club, et al.:

10 TERRY J. LODGE, ESQ.  
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15 AND

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:07 a.m.)

3 CHAIR SPRITZER: Let's go on the record.

4 We are here this morning in the matter of  
5 Detroit Edison Company, which is Docket Number 52-033-  
6 COL, also ASLBP Number 09-880-05-COL-BD01.

7 We are here to conduct a prehearing  
8 teleconference to go over issues related to the  
9 conduct of the evidentiary hearing that we will be  
10 holding starting on October 30th.

11 Why don't we go around and have everybody  
12 identify themselves for the record. Why don't we  
13 start with the Intervenors.

14 MR. LODGE: This is Terry Lodge. I'm  
15 counsel for the Intervenors. I am joined from a  
16 separate location by Kevin Kamps, who is a  
17 representative of one of the Intervenors, Beyond  
18 Nuclear.

19 CHAIR SPRITZER: Very well. And for the  
20 staff, who do we have again?

21 MS. CARPENTIER: This is Marcia  
22 Carpentier. And with me are Kevin Roach and Megan  
23 Wright, all attorneys for the NRC staff, and Nicholas  
24 Koontz, a paralegal. And dialing in from another  
25 location is Anthony Wilson, also counsel for NRC

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1 staff.

2 CHAIR SPRITZER: Okay. And for Detroit  
3 Edison?

4 MR. REPKA: Yes. This is David Repka,  
5 counsel for DTE Electric. And also on the line today  
6 from different locations are my partner, Tyson Smith,  
7 and also from Detroit Bruce Maters and Jon  
8 Christinitis. And also listening in today is -- from  
9 DTE Electric is Peter Smith, the Director of Nuclear  
10 Development for DTE Electric.

11 CHAIR SPRITZER: Very well. And here in  
12 Washington in our conference room, in addition to  
13 myself, are our two law clerks for this case, Onika  
14 Williams and Matt Zogby; Matina Solomakos, our  
15 clerical administrative person; and Andy Welkie, who  
16 is our technical expert, who is going to help us  
17 explain the setup in the courtroom when we get to that  
18 issue.

19 Randy Charbeneau, one of our other judges,  
20 is on the line I believe, and --

21 JUDGE CHARBENEAU: I am still here. Good  
22 morning, everybody.

23 CHAIR SPRITZER: Good. And as I  
24 mentioned, Judge Baratta will hopefully be joining us  
25 in the very near future, but we will go ahead and

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1 start moving through the things that we are here to  
2 talk about.

3 First thing -- well, first two issues I  
4 guess are kind of general background on the logistics,  
5 security, and so forth. The building probably -- I  
6 think everybody has been to this building before when  
7 we had our -- at least some members of each group have  
8 been to this building before when we had our oral  
9 argument there. I think it was in 2009.

10 As I remember, the parking was pretty  
11 reasonable there. It wasn't difficult to park.

12 Security is being handled locally. That  
13 is, the NRC is not directly doing the security. We  
14 have contracted with/arranged with the local police to  
15 take care of that.

16 My understanding is there will be a  
17 screening or metal detector-type device, so take that  
18 into account in terms of planning for when you arrive.  
19 And of course, obviously, it would be good to have a  
20 picture ID with you when you come in the building. I  
21 don't know if they will require one or not.

22 We have sent hopefully everybody -- all of  
23 the parties got the pictures we sent out Friday that  
24 show the arrangements, at least generally, of the  
25 courtroom. They don't exactly tell you how we're

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1 planning to set things up, but of course the Judges  
2 will be in the middle of the bench facing counsel, who  
3 will be at tables. And I think the plan is, what, to  
4 have monitors at each table for counsel? Yeah, that's  
5 correct.

6 The witnesses will be seated -- well, if  
7 you're facing the bench, they will be seated on the  
8 left side. There are several monitors and microphones  
9 shown over there. Law clerk and Court Reporter will  
10 be to the Judges' left, to counsels' right.

11 If anybody doesn't have these pictures, by  
12 the way, or don't know what I'm talking about, please  
13 let me know. And as I said, we'll have tables for  
14 counsel in front facing the bench, obviously, and we  
15 will have monitors for -- at each counsel table.

16 Do we know how many we are going to have?  
17 One monitor on each table. So hopefully that will be  
18 sufficient, depending on how many attorneys you have.  
19 But they should be large enough, I would think, that  
20 they will be able to see the documents.

21 There will also be -- there is a screen  
22 over to the right -- I'm not sure if it shows up in  
23 all of the pictures -- but a screen where the  
24 documents will be displayed.

25 And, as I said, the witnesses will have

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1 monitors in front of them. They probably also can see  
2 the screen. It's a little far away, but members of  
3 the audience can -- they will have to turn their necks  
4 to the right I guess, but they will be able to see  
5 documents that are put up on the screen as well.

6 Before we move on, any questions about the  
7 setup?

8 MR. LODGE: Yes, Judge. This is Terry  
9 Lodge. Is there going to be Wi-Fi available?

10 CHAIR SPRITZER: We don't know at this  
11 point. Why don't you -- we will try to get back to  
12 you on that. Yes. We don't know the answer to that.  
13 It's not our facility, obviously, so we'll have to  
14 check with the people out there.

15 By the way, Judge Baratta has just joined  
16 us. So we have done the preliminaries and are talking  
17 about the setup there.

18 JUDGE BARATTA: I do apologize for being  
19 late, but there has been some strange things going on  
20 in D.C. today, so -- and caused a lot of traffic jams.

21 CHAIR SPRITZER: All right. Well, let's  
22 move on, then. If nobody else has any questions about  
23 the setup of the hearing room, let's move on to talk  
24 about exhibits.

25 First, well, the Intervenors, Mr. Lodge,

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1 at least -- let's see, was this true on contention 8  
2 only, or contention 8 and 15, that they filed them as  
3 one document?

4 MR. LODGE: I'm sorry. I don't understand  
5 your question. This is Terry Lodge.

6 CHAIR SPRITZER: I'm talking to my  
7 colleague over here.

8 MR. WELKIE: Yes. I wasn't able to find  
9 any other documents attached to their statement of  
10 position.

11 CHAIR SPRITZER: Okay. Well, first of  
12 all, contention 8, you filed exhibits as one document.

13 MR. LODGE: Yes.

14 CHAIR SPRITZER: What we need for to do is  
15 to refile those as separate numbered exhibits, each of  
16 the documents with a separate number. I think the  
17 convention that has been used -- I know it was used by  
18 the staff -- was for the environmental contention, for  
19 contention 8, it would be -- you know, your first  
20 exhibit would be I guess INT for Intervenors, E for  
21 environment or environmental, 001, and --

22 MR. LODGE: Okay.

23 CHAIR SPRITZER: -- and then sequentially  
24 after that. And I think -- what the staff did I think  
25 -- DTE can correct me if I'm wrong -- I think they did

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1 it the same way, was for the -- for contention 15,  
2 that would be INT, S for safety, and then, again,  
3 numbered sequentially with three numbers, 001, 002,  
4 et cetera.

5 So we need you to refile those. Do you  
6 think you can do it in 10 days?

7 MR. LODGE: Yes, sir. Easily.

8 CHAIR SPRITZER: Okay.

9 MR. LODGE: Sir, how are the proprietary  
10 exhibits being filed? Same way?

11 CHAIR SPRITZER: Same way. You don't have  
12 any proprietary exhibits, do you, or do you?

13 MR. LODGE: A few.

14 CHAIR SPRITZER: Okay. Yes, I don't think  
15 they would be filed -- the numbering system would be  
16 the same. How have we been indicating proprietary  
17 exhibits?

18 MR. WELKIE: Again, this is Andy Welkie.  
19 For exhibits that are filed with a redacted and an  
20 unredacted version, we have typically identified them  
21 with the same exhibit number with a U at the end of  
22 the unredacted version, or with a designation that  
23 says not public information.

24 If it's a document that doesn't have a  
25 public version filed, we just number it. If it was,

1 say, Intervenor 1, it would be just Intervenor 1.

2 CHAIR SPRITZER: Anything, of course, that  
3 has privileged information that hasn't been redacted  
4 would be filed in the protective order file, not in  
5 the public file, obviously.

6 So for the staff, we had one small issue  
7 with your exhibits. I think at least some of your  
8 testimony did not have an exhibit number, and I'm told  
9 that's necessary. Can you refile those with exhibit  
10 numbers, any --

11 MS. CARPENTIER: Certainly, Your Honor.

12 CHAIR SPRITZER: -- any testimony that  
13 wasn't -- doesn't have an exhibit number.

14 I think DTE -- we didn't have any problems  
15 with Detroit Edison's exhibits or testimony.

16 For everyone, we would like to have  
17 ideally 10 days before the hearing, unless it's a  
18 problem -- why don't we shoot for that -- a final  
19 exhibit list. You may already have submitted one. If  
20 you haven't changed it, that's fine. Maybe just send  
21 an email to our law clerk saying, "We don't have any  
22 changes to our final exhibit list" on that day.

23 If you do have changes between now and  
24 then, obviously update the exhibit list, file -- it  
25 sounds like both the Intervenors and the staff will

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1 have -- need to make changes to their list based on  
2 renumbering various items. So please file final  
3 exhibit lists no later than 10 days before the  
4 hearing. That would be October 20th.

5 So unless there is some issue with that --  
6 what we would normally do -- what we will do at the  
7 hearing in terms of moving documents into evidence,  
8 hopefully you all can confer and if there are any  
9 problems, any objections to exhibits, try and work  
10 them out among yourselves.

11 If you can't, what we will do at the  
12 beginning of the hearing, each side will move the  
13 documents on their final exhibit list into evidence as  
14 one -- at one time. That is, Intervenors will say,  
15 "We hereby move into evidence all of the documents on  
16 our final exhibit list." If there are any objections,  
17 at that time they can be stated and the Board will  
18 rule on them.

19 The idea, of course, is to get the  
20 documents that are admissible into evidence as quickly  
21 as possible. We will do the same thing for the staff  
22 and Detroit Edison. That is, you will move your final  
23 exhibit list as a whole into evidence, we will rule on  
24 any objections, and hopefully quickly move into the  
25 testimony at that point.

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1 Any questions on exhibits?

2 (No response.)

3 Hearing none, we will move on to opening  
4 and closing statements. Our thought was -- we have  
5 two contentions, obviously, but that we will do one  
6 opening statement for both contentions at the start of  
7 the hearing, and then we'll have closing argument on  
8 both contentions when we have finished with both.

9 That is, we won't have a separate opening  
10 statement for contention 8 and contention 15. You  
11 cover whatever you have to say about both in your  
12 opening statement at the beginning of the hearing.

13 Closing, we will probably have that on the  
14 last day of the hearing. I don't know -- we are  
15 hopeful that we can finish the testimony in two days,  
16 but, in any event, our thought would be we would do  
17 closing argument, and, if there are any witness  
18 testimony remaining, that as well on the morning of  
19 the -- I guess it's the first, Friday, November 1st.

20 And our thought was 10 minutes -- given  
21 that we already have your statements of position, your  
22 prefiled testimony, we are going to have a pretty good  
23 idea coming in what your position is. So 10 minutes  
24 for an opening statement ought to be sufficient. Ten  
25 minutes per side, that is, so a total of 30 minutes

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1 for all three parties.

2 And, as I said, the closing will be the  
3 last day. I don't think we will set a time limit on  
4 that, or, if we do, it will be later on. We will see  
5 how much we think we need to hear in the way of  
6 closing argument.

7 On witnesses, just to be clear, unless I  
8 am missing something, the Intervenors have no  
9 witnesses on contention 8. Is that correct?

10 MR. LODGE: That is correct.

11 CHAIR SPRITZER: We think we will have --  
12 that we will be able to move fairly quickly through  
13 contention 8. We are estimating that we would  
14 spend --

15 THE COURT REPORTER: This is the Court  
16 Reporter. Can I ask again that people state their  
17 name before they speak?

18 CHAIR SPRITZER: That was just Mr. Lodge  
19 there speaking, and this is Judge Spritzer again.

20 So our estimate is we are starting at 9:30  
21 on the -- barring some unexpected technical  
22 difficulties, we will be starting at 9:30 on  
23 Wednesday, the 30th, half an hour or so for opening  
24 statements. We are hopeful that we can finish with  
25 contention 8 in the morning, within an hour or two,

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1 and move on to contention 15 after that.

2 We had thought we might be able to  
3 eliminate some witnesses for contention 8. But after  
4 having looked everything over, the only witness I  
5 think we can eliminate is the NRC staff's witness  
6 sponsoring the EIS. I don't think that will be  
7 necessary.

8 Mr. Lodge, you don't have any objection to  
9 admitting the final environmental impact statement  
10 into evidence, do you?

11 MR. LODGE: This is Terry Lodge. No.

12 CHAIR SPRITZER: Okay. You don't need to  
13 bring anybody out there to sponsor the environmental  
14 impact statement on contention 8. That person is, of  
15 course, welcome to attend if he or she chooses, but --  
16 is that acceptable to the staff?

17 MS. CARPENTIER: Yes, it is.

18 CHAIR SPRITZER: Okay. As I said, you're  
19 welcome to bring that individual if you want, but  
20 we're not going to have any questions for him or her.

21 On contention 15, as I said, that would  
22 follow contention 8. Our thought on the order of  
23 witnesses would be that we would start with the  
24 Intervenors' witness, Mr. Gunderson. Our questions  
25 for him may or may not -- we may or may not finish

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1 with him on the first day. After that, we would move  
2 into the Detroit Edison witnesses, and then the staff  
3 witnesses.

4 If anybody has any different view as to  
5 how we ought to proceed on either of those two  
6 contentions, let us know. On contention 8, I think we  
7 would start in reverse order with the staff, and then  
8 move to Detroit Edison on contention 8 in terms of  
9 witnesses.

10 MR. SMITH: Judge Spritzer, this is Tyson  
11 Smith for DTE. On contention 8, you know, in light of  
12 the fact that Intervenors don't have a witness, I'm  
13 just wondering how you were planning to handle that.  
14 Are you thinking that there will be some legal  
15 questions for Mr. Lodge? Or I'm just trying to  
16 understand what -- how you were thinking to get the  
17 Intervenors' views, if any, or if at all, on  
18 contention 8.

19 JUDGE SPRITZER: Well, we're not going to  
20 call Mr. Lodge as a witness. He is the representative  
21 of a party, and that wouldn't be appropriate. If we  
22 have any legal questions, we will take them up at the  
23 -- during the legal argument stage at the end.

24 I think our questioning will be -- you  
25 know, we have -- the reason we are having any

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1 witnesses at all is we have some questions to ask the  
2 staff, and probably a few for the Detroit Edison  
3 witnesses, including some that Intervenors have  
4 submitted in camera. So that is what we are planning  
5 to do.

6 You know, we have the case that the  
7 Intervenors have put forward in their statement of  
8 position and their exhibits, and that's what we are  
9 taking their case to be. But as I said, we don't  
10 expect to spend a great deal of time on contention 8,  
11 given the absence of any Intervenor witnesses.

12 As far as the order in which we were going  
13 to call -- are planning to call the various witnesses,  
14 any comments or questions on that from anybody else?

15 (No response.)

16 All right. We will move on. We will, by  
17 the way -- on questioning, we will allow all parties  
18 to submit questions to us. We have questions that you  
19 submitted already, but during the hearing you can  
20 submit additional questions to us. Obviously, they  
21 will need to be prepared quickly. They can be  
22 submitted in handwritten form; index cards are a good  
23 way I have found to do that.

24 So we will entertain additional questions  
25 that you may want to submit during the actual

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1 testimony itself. Of course, it's -- normally at  
2 least the practice that we will follow, and I think  
3 most boards follow, is that they will -- we would ask  
4 those questions after the Board has asked our own  
5 questions.

6 To the extent we may have covered the same  
7 issues, you know, we won't duplicate. But if there  
8 are some issues that you brought up in your questions  
9 that we haven't covered, we generally try and ask  
10 those questions.

11 Any questions on the questioning procedure  
12 or procedure for submitting questions during the  
13 hearing?

14 MS. CARPENTIER: Judge Spritzer, this is  
15 Marcia Carpentier for the NRC staff. I have only one  
16 question related to witnesses, and that is, will you  
17 be empaneling witnesses as a panel or calling them  
18 individually when there is more than one for a  
19 contention for a given party?

20 JUDGE SPRITZER: I assume the staff's  
21 preference -- and you can correct me if I'm wrong --  
22 is to do them as a panel. That's what we have been  
23 contemplating. If for any reason somebody would want  
24 their witnesses called separately, we could do that.

25 But generally it's a little more efficient

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1 since often one -- we will be asking questions of one  
2 -- that we expect one witness will have the answer to,  
3 and it turns out somebody else has the answer, rather  
4 than have to defer the question until later, to have  
5 them as a group. I think -- you don't have more than,  
6 what, three or four witnesses on any --

7 MS. CARPENTIER: Yes. Three is our  
8 maximum.

9 JUDGE SPRITZER: Yes. That sounds  
10 manageable. So, you know, we are quite happy to do it  
11 that way unless the staff would prefer something  
12 different.

13 MS. CARPENTIER: No, that's fine. We just  
14 wanted to be clear in advance.

15 JUDGE SPRITZER: Right. And same thing  
16 for Detroit Edison. Unless you all have a different  
17 preference, we would call your witnesses as a group.  
18 I don't think -- what is the maximum -- how many  
19 witnesses do you all have on contention 15?

20 MR. SMITH: This is Tyson Smith for  
21 Detroit Edison. We have -- for DTE. We have four  
22 witnesses for contention 15.

23 JUDGE SPRITZER: Okay.

24 MR. SMITH: But I think, you know,  
25 realistically, I think there will -- you know, there

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1 will probably be one or two of them who do the bulk of  
2 the responding, and, you know, I think you will  
3 probably be talking regularly to at most three of  
4 them. That's my -- how I anticipate it going.

5 JUDGE SPRITZER: Okay.

6 MR. SMITH: We would prefer to do it as a  
7 panel as well, as you mentioned, as given the scope of  
8 the contention, it is sort of hard to define exactly  
9 who is going to -- they are not broken up into, you  
10 know, bite-size chunks on a witness-by-witness basis.  
11 So I think it would make sense -- and we would prefer  
12 to do it as a panel.

13 JUDGE SPRITZER: All right. Unless, Mr.  
14 Lodge, do you have any problem with us handling it  
15 that way for the -- you only have one witness on  
16 contention 15, as I understand it -- Mr. Gunderson.

17 MR. LODGE: Correct. This is Mr. Lodge.  
18 Yes.

19 JUDGE SPRITZER: Would you have any  
20 problem with us having the staff and Detroit Edison  
21 witnesses testify as a panel rather than individually?

22 MR. LODGE: No.

23 JUDGE SPRITZER: That's generally the way  
24 we -- they're often handled that way at NRC hearings.

25 All right. Well, that's what we'll plan

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1 to do.

2 While we're on the subject of questioning,  
3 obviously, there have -- there is information in this  
4 case that is covered or designated as proprietary. We  
5 don't really know -- at least the Board members don't  
6 really know what that is. What we would propose to  
7 do, generally -- everybody still there? I guess  
8 somebody signed off.

9 MR. LODGE: Intervenors are.

10 JUDGE SPRITZER: The staff and DTE, are  
11 you still there?

12 MR. SMITH: Yes, Judge Spritzer. This is  
13 Tyson Smith.

14 MR. REPKA: David Repka. We're still  
15 here.

16 MS. CARPENTIER: And the staff is still  
17 here. This is Marcia Carpentier.

18 JUDGE SPRITZER: All right. This is Judge  
19 Spritzer again. So apologies, again, to the Court  
20 Reporter.

21 For the proprietary information, I think  
22 what is probably going to -- what we would plan to do  
23 is have a separate session. It doesn't seem likely  
24 that there would be any proprietary information  
25 related to contention 8. I assume this is all

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1 information related to contention 15.

2 So what we would propose to do is at the  
3 end of the second day clear the courtroom and have --  
4 at that time we would ask whatever questions we might  
5 have that are proprietary in nature. Now, that  
6 obviously leads to the problem of, how do we know what  
7 questions might get into proprietary information?

8 The most obvious way is for counsel for  
9 Detroit Edison, who I assume is the party designating  
10 information as proprietary, to tell us, "Judge, your  
11 question may call for an answer that would lead the  
12 witness to disclose proprietary information." We will  
13 simply have to mark that question and -- for later  
14 review and ask it at the session that is -- where the  
15 public is not present.

16 I don't know if there is anything Detroit  
17 Edison can do to let us know, give us some idea, maybe  
18 in some sort of letter submitted in camera, of things  
19 we -- areas that we might want to avoid so as to avoid  
20 -- you know, so as to not be constantly asking  
21 questions during the public session that are getting  
22 into proprietary information.

23 But that -- you know what the information  
24 is. We don't. Would that be of any help, do you  
25 think?

1                   MR. SMITH: Yes. This is Tyson Smith for  
2 Detroit Edison. I think your first -- with respect to  
3 your first comment about having a separate in camera  
4 session at the end, if we need to get into that, I  
5 think that makes good sense. And we are of course,  
6 since the information is proprietary, we have  
7 designated it as such, and we are happy to, you know,  
8 raise that for the Board if it looks like we are going  
9 to get into questions that touch on that proprietary  
10 information.

11                   I think realistically, having reviewed the  
12 pleadings of the parties and understanding I think  
13 what some of the discussion is going to be about, I  
14 kind of doubt we are really going to get deep into any  
15 proprietary information. So I think it is not likely  
16 to be something that is going to be coming up  
17 regularly. That said, I am happy to see if I can  
18 articulate in a few bullets kind of what we see as the  
19 information.

20                   And I think that will be helpful at, if  
21 nothing else, giving the parties some comfort that we  
22 are not going to touch on too much proprietary  
23 information during the contention 15 discussion. But  
24 I am happy to take an action to outline what the  
25 information types are, and I think that's something

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1 that I could, you know, share with all of the parties,  
2 and the Judges of course, to give you some idea of  
3 what we're talking about.

4 JUDGE SPRITZER: Sure. That would be  
5 helpful. We'd obviously like to avoid -- you know,  
6 move the hearing along faster if we can avoid getting  
7 into those areas, to the extent we might.

8 All right. Is there anything else we need  
9 to talk about with respect to proprietary information?

10 (No response.)

11 All right. Next on the list -- again,  
12 this is Judge Spritzer. Next on the list is deadline  
13 for proposed transcript corrections and proposed  
14 findings of fact and conclusions of law.

15 Thirty days -- what will generally happen,  
16 of course, is we'll get the hearing transcript  
17 probably four or five business days after the hearing  
18 concludes. At that point, we would start the time  
19 period for making transcript corrections. Those are,  
20 of course, not to change the substance of anyone's  
21 testimony, but simply to correct errors in the  
22 transcript. And normally 30 days seems sufficient, so  
23 we would propose 30 days for transcript corrections.

24 In terms of proposed findings of fact and  
25 conclusions of law, that is starting to get into the

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1 Christmas holiday period. That is, if we have 30 days  
2 for transcript corrections, we are probably going to  
3 get those early December. So we thought we would give  
4 you 45 days from -- well, an extra 45 days, so I guess  
5 it would be -- what would that be? Seventy-five days  
6 from receipt of the transcript to submit proposed  
7 findings of fact and conclusions of law.

8 Does that sound reasonable to everybody or  
9 not?

10 (No response.)

11 No one seems to be objecting, so we'll go  
12 with those.

13 Last, but not least, are there any issues  
14 that anybody wants to raise that I haven't covered  
15 here this morning?

16 MR. LODGE: This is Terry Lodge. Yes,  
17 sir. There is several things that we would like to  
18 raise. I don't know if -- do you want us to do so now  
19 or wait?

20 JUDGE SPRITZER: Well, if they're related  
21 to the procedure for the hearing, we should talk about  
22 them now. If they're substantive arguments about the  
23 merits of the case, that's not what we're really here  
24 to do today.

25 MR. LODGE: We think they relate to the

1 former.

2 JUDGE SPRITZER: Okay.

3 MR. LODGE: One is that we have a pending  
4 request to the NRC to provide us information on fees  
5 paid for licensure that has been pending for nearly  
6 four months, and we don't have that information yet.  
7 We believe it might be pertinent to issue 15 and -- to  
8 contention 15.

9 JUDGE SPRITZER: Well, if you want to put  
10 an issue in front of us, you'll have to file some kind  
11 of motion. Right now, we don't have -- I don't -- to  
12 my knowledge, we don't have anything pending before  
13 the Board on that. Am I mistaken?

14 MS. CARPENTIER: This is Marcia Carpentier  
15 for the staff. I just wanted to let you know that the  
16 public document room is working on the request and  
17 should have an answer shortly.

18 JUDGE SPRITZER: Yes. This is Judge  
19 Spritzer again. You know, if you think it's related  
20 to the hearing, and you're not -- you of course have  
21 an obligation to discuss the issue with the staff and  
22 try and resolve it with them without bringing it to  
23 us. If that can't be done, and it is in some way  
24 related to the hearing, it would be a good -- now  
25 would be -- or in the very near future would be a good

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1 time to raise it, because we would have to get a  
2 response from staff and then rule on it, it sounds  
3 like.

4 Now, is this a FOIA request? I'm not  
5 clear on this. Is this something --

6 MR. LODGE: Yes. Yes.

7 JUDGE SPRITZER: All right. Well, I'm not  
8 sure -- I'm not even sure whether we have any  
9 jurisdiction in FOIA matters, to the best of my  
10 knowledge.

11 MS. CARPENTIER: Yes. It's not strictly  
12 a FOIA request, Judge Spritzer. This is Marcia  
13 Carpentier again. It is Mr. Gunderson approaching our  
14 reference librarians in the public document room, and  
15 a lot of what he has asked for is outside of the  
16 public document room as such and involves the Office  
17 of the Chief Financial Officer. So some research has  
18 been done, but there should be an answer soon.

19 JUDGE SPRITZER: All right.

20 MS. CARPENTIER: And it's not under FOIA  
21 or any other particular statute, other than that the  
22 public is allowed to call our public document room.

23 JUDGE SPRITZER: Okay. All right. Well,  
24 you said you had several -- this is Judge Spritzer  
25 again. Mr. Lodge, you had --

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1 MR. LODGE: Yes.

2 JUDGE SPRITZER: -- you have some other  
3 matters you wanted to raise?

4 MR. LODGE: Yes. This is Terry Lodge  
5 again. As I recall, the Board had solicited memoranda  
6 from the parties on the matter of the transmission  
7 order for purposes of determining whether or not to  
8 make a reference to the full Commission of the matter.

9 JUDGE SPRITZER: Right.

10 MR. LODGE: I understand that doesn't --  
11 that isn't part of this hearing coming up. But does  
12 the Board have any idea as to the timing of that?

13 JUDGE SPRITZER: Well, we are working on  
14 it. This is Judge Spritzer again. But because it  
15 doesn't really impact the hearing one way or another  
16 that we can see, we will probably -- you know, I hope  
17 we can get something -- a ruling out on that before  
18 the hearing, but it won't affect the hearing one way  
19 or the other. I don't see any connection between  
20 issues are going to be having the hearing on and that  
21 question.

22 In any event, even when we rule, it has to  
23 go to -- even if we were to decide that we wanted --  
24 that we were to recommend the issue to -- it would  
25 have to go to -- our ruling would have to go to the

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1 Commission for their approval.

2 So you're not likely to see any final  
3 resolution of whether that issue will be heard by the  
4 Board or not, until after the hearing is over. That's  
5 the best information I can give you on that, because,  
6 as I said --

7 MR. LODGE: Okay. This is Terry Lodge  
8 again. The final item is, as I recall, there is also  
9 going to be a public hearing or meeting convened by  
10 the Licensing Board the night before.

11 JUDGE SPRITZER: That's correct.

12 MR. LODGE: Okay. That is for purposes of  
13 public comment?

14 JUDGE SPRITZER: Right. It's not for  
15 argument by the parties to this case. It's for  
16 members of the public to come and state their views on  
17 the issue we are to hear, but the statements don't  
18 constitute evidence, can't be used as the basis of our  
19 ruling. They are more like a general public  
20 participation session, but not for the purpose of  
21 taking evidence or hearing argument from the parties.

22 MR. LODGE: I'm sorry, Your Honor. This  
23 is Terry Lodge. One last thing is that we are  
24 awaiting 18 non-proprietary documents that have been  
25 listed but not cited by DTE in its disclosure since

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1 April. That's the final matter. And I intend to  
2 confer with counsel for DTE on the provision of those.

3 JUDGE SPRITZER: Very well. All right.  
4 Well, I mean, if there are any -- going to be any  
5 disputes about production of documents that impact the  
6 hearing, as I said, you first need to consult with the  
7 other counsel, try and resolve the issue. And if that  
8 can't be -- if the issue can't be resolved, raise it  
9 with us in time to get a ruling before the hearing.

10 All right. Anything else from any of the  
11 parties?

12 MR. SMITH: This is Tyson Smith with DTE  
13 Energy. I just had one question about the exhibits,  
14 and I apologize for not raising this earlier. I  
15 wasn't clear on how -- whether we were going to have  
16 a separate discussion on audio-visual equipment.

17 I know Mr. Welkie mentioned that there  
18 would be monitors at the counsel table and before the  
19 witnesses, and I guess for the Judges, and then also  
20 a screen in the room. Are we going to be able to use  
21 those to call up individual exhibits, you know, when  
22 we want to -- do we want to reference those so that  
23 the public can see, or, you know, if we've got a  
24 couple of key exhibits that, you know, we wanted to --  
25 you know, existing, already submitted exhibits that we

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1 wanted to blow up and have available so we could talk  
2 to and point to if we thought that would be helpful.  
3 I'm just trying to understand what you were  
4 anticipating in that regard.

5 JUDGE SPRITZER: Yes. This is Judge  
6 Spritzer again. The procedure -- you of course I  
7 think remember the Calvert Cliffs hearing. I think we  
8 are doing it basically the same way, same type of  
9 equipment, same procedures there. So if you -- you of  
10 course won't be -- and I take it it has been clear  
11 from our previous order that counsel will not be  
12 asking questions at this hearing.

13 But if a witness wants to refer to a  
14 document to say -- I mean, I don't know whether they  
15 are going to know exhibit numbers. If they can give  
16 us an idea of what the exhibit is, obviously that  
17 would be helpful. I don't know that we will have them  
18 all committed to memory.

19 But we can certainly -- we plan to bring  
20 up exhibits as appropriate during -- and put them on  
21 the screen during witness testimony. If a witness has  
22 something that they want to refer to, and if you can  
23 let us know maybe before the testimony starts so that  
24 we are prepared, you know, our technical people know  
25 what the document number is and can bring it up to the

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1 screen quickly, that would be helpful. But that may  
2 not always be possible.

3 MR. SMITH: Okay. That makes sense, and  
4 I appreciate and understand that. So we'll -- if  
5 necessary, if we decide it's warranted, we will try  
6 and provide a list of any exhibits we think we are  
7 almost certainly going to raise beforehand.

8 But then if during the course of, you  
9 know, our witnesses testifying they want to refer to  
10 an exhibit, they just, you know, can say it out loud  
11 by the exhibit number and your technical people have  
12 the capabilities to pull that up on everyone's screen,  
13 so we can all be talking about the same thing.

14 JUDGE SPRITZER: Right. Exactly. As long  
15 as they can identify the exhibits by an exhibit  
16 number, they should be able to do that. As you know,  
17 of course, many of the Board's questions will actually  
18 start by putting an exhibit up on the board and  
19 saying, you know, "Tell me what this means," or  
20 something to that effect. So we will probably -- a  
21 lot of the time there will be something up on the  
22 screen as part of our questioning.

23 MR. SMITH: Okay. Thank you very much.  
24 That was helpful.

25 JUDGE SPRITZER: And the same thing

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1 applies to all parties. Obviously, if you have  
2 exhibits that one of your witnesses expects to refer  
3 to during his testimony -- and we are not going to --  
4 the witnesses are not going to make speeches. They  
5 are going to only respond to the questions we ask.

6 But they might very well anticipate that  
7 in responding to our questions they would likely refer  
8 to particular exhibits. And if you can identify what  
9 those are and give us the exhibit numbers beforehand,  
10 that would make our technical -- the job of our  
11 technical people easier. But if we have to go through  
12 and try and find an exhibit for you, we'll try and do  
13 that, as long as it doesn't get out of hand.

14 Okay. Anything else? Any of the -- Judge  
15 Charbeneau, Judge Baratta, do you have any -- anything  
16 you --

17 JUDGE BARATTA: This is Judge Baratta. I  
18 don't have anything else.

19 JUDGE SPRITZER: Judge Charbeneau?

20 (No response.)

21 All right. Let me just review my notes  
22 and make sure I haven't left anything else.

23 MS. CARPENTIER: Judge Spritzer?

24 JUDGE SPRITZER: Yes.

25 MS. CARPENTIER: This is Marcia Carpentier

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1 for the NRC staff. I have two logistical-related  
2 issues.

3 JUDGE SPRITZER: Okay.

4 MS. CARPENTIER: One of them is, in the  
5 days of paper exhibits, we used to stamp them. Is  
6 that required anymore, or are the documents that we  
7 filed already with exhibit numbers typed on them  
8 sufficient?

9 JUDGE SPRITZER: The latter. The ones you  
10 have submitted are sufficient. We are not planning on  
11 using any paper documents if we can possibly avoid it.  
12 The last hearing I had we did have one with a witness  
13 produced more or less sua sponte. But apart from  
14 something like that, we are going to be using  
15 electronic documents and electronic documents only.

16 MS. CARPENTIER: Thank you. And the  
17 second is, I know that the Board's hearing room here  
18 in Rockville has three small conference rooms for the  
19 parties to use during the proceeding. Has something  
20 like that been arranged at this venue or not?

21 JUDGE SPRITZER: This is Judge Spritzer  
22 again. Yes. We do have breakout rooms or conference  
23 rooms for the parties. They are divided up between  
24 the first floor, the second floor, and the fourth  
25 floor. We will get an email out to you and let you

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1 know -- have we assigned them or --

2 (Pause.)

3 Yes. We do have three conference rooms.  
4 We are going to have to figure out who gets what  
5 conference room. I guess some are further away from  
6 the courtroom than others, so I guess we will have to  
7 draw straws out of a hat or something.

8 Does any party have any problems with  
9 witnesses who might have physical problems in terms of  
10 getting around the courthouse?

11 MR. REPKA: This is Dave Repka for DTE.  
12 No, we do not have that issue.

13 JUDGE SPRITZER: Staff, do you?

14 MS. CARPENTIER: No, we do not.

15 JUDGE SPRITZER: And Mr. Lodge?

16 MR. LODGE: This is Terry Lodge. No, we  
17 do not.

18 JUDGE SPRITZER: All right. Well, we'll  
19 probably put ourselves the furthest away. We probably  
20 don't have as much need for a conference room as you  
21 all may. But in any event, we'll let you know exactly  
22 what room numbers, but, yes, there will definitely be  
23 conference rooms available. At least that is our  
24 understanding.

25 While I was on that -- the subject of

1 witnesses, is there any witnesses -- any witness who  
2 is going to only be available for one or two of our  
3 hearing days? In other words, any problems with  
4 availability of witnesses? Mr. Lodge, why don't we  
5 start with you. Is Mr. Gunderson going to be  
6 available all three days?

7 MR. LODGE: Thank you. If you would, I  
8 wonder if I might have a couple of minutes to confer  
9 with him by phone.

10 JUDGE SPRITZER: All right.

11 MR. LODGE: I believe he might be, but I  
12 don't know.

13 JUDGE SPRITZER: Well -- all right. Why  
14 don't we do this. Why don't you -- you don't need to  
15 do that right now. Why don't you talk to him, get  
16 back to our law clerk, Ms. Williams, let her know. I  
17 mean, the plan right now, as I said earlier, is to  
18 have him testify on Wednesday, the 30th. But it could  
19 easily, you know, extend into the 31st.

20 Conceivably, we might have some additional  
21 questions for him after we have heard the Detroit  
22 Edison and staff witnesses on contention 15. I'm not  
23 saying that will happen; it might. If he's not there,  
24 obviously, that would make it difficult to ask him any  
25 questions, in fact impossible. So, but let us know on

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1 that.

2 As I said, we're planning, we're hopeful  
3 that we will finish both contentions by the end of the  
4 second day -- that is, the 31st -- and limit -- and  
5 Friday would be just for closing arguments, which will  
6 probably include some questions from the Board. I  
7 don't think we're going to be asking questions during  
8 your opening statements, but during the closing  
9 arguments we may very well have some questions about  
10 the evidence and your legal positions.

11 MR. LODGE: Judge, this is Terry Lodge  
12 again. Pardon me for interrupting. I have word from  
13 Mr. Gunderson that, indeed, he will be present and can  
14 be available any time the Board --

15 JUDGE SPRITZER: All three days?

16 MR. LODGE: Yes.

17 JUDGE SPRITZER: Great. And for the  
18 staff, are there any witness availability issues?

19 MS. CARPENTIER: All of our witnesses are  
20 available. However, we are, as most of the Federal  
21 Government is, operating under sequester. And if at  
22 some point the contention 8 witnesses can be  
23 dismissed, that would be useful, so that they can  
24 travel back earlier and save on money.

25 JUDGE SPRITZER: That would be fine. As

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1 I said, I would be shocked if they are -- if we're not  
2 finished with them on the morning of the -- by, you  
3 know, 1:00 at the latest, assuming we don't have any  
4 problems with the technology out there. Our people  
5 will be there on Tuesday setting up the equipment, so  
6 hopefully we will be ready to go at 9:30 on the 30th.

7 So, yes, I think they could realistically  
8 expect to leave and go back at the end of the --  
9 during the first day or at the end of the first day.

10 And, last, for Detroit Edison, any issues  
11 with witness availability?

12 MR. SMITH: No. This is Tyson Smith. No.  
13 No, Judge Spritzer, we don't. I mean, although the  
14 same as Ms. Carpentier said, if our contention 8  
15 witness, you know, was done at the end of Wednesday,  
16 that would be good to know. But we have no  
17 limitations on our witness' availability.

18 JUDGE SPRITZER: All right. Great. All  
19 right, then. That covers everything we have.

20 One last chance, Mr. Lodge, do you have  
21 anything further?

22 MR. LODGE: No, sir.

23 JUDGE SPRITZER: Detroit Edison, do you  
24 have anything further?

25 MR. SMITH: No, Judge Spritzer.

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1 JUDGE SPRITZER: And the staff, do you  
2 have anything that you haven't covered?

3 MS. CARPENTIER: No. Thank you very much.

4 JUDGE SPRITZER: Very well. We will  
5 conclude the hearing at this point and -- the  
6 prehearing conference at this point. And we look  
7 forward to seeing all of you on the 30th in Monroe,  
8 Michigan.

9 Very well. We will go off the record,  
10 then.

11 (Whereupon, at 10:49 a.m., the  
12 proceedings in the foregoing matter were  
13 concluded.)

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