

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

October 23, 2013

ORDER

(Ruling on Staff Objections to Intervenor Exhibits)

On Monday, October 7, 2013, the NRC Staff filed objections to a series of exhibits submitted by Intervenor on Contention 15 in the above proceeding.¹ In response to the Board's Order of October 8, 2013,² the Intervenor filed their response to these objections on October 18, 2013.³ Due to a blanket extension provided to parties as a result of the government shutdown, Intervenor's filing is timely.

Contention 8 Exhibits

There have been no objections to Intervenor's Contention 8 exhibits (INTE 001-004), which Intervenor refiled separately with exhibit numbers pursuant to the Board's instruction. As such, they will be considered for admission at the evidentiary hearing.

Contention 15 Exhibits

Although the Board did not intend to allow for the filing of new exhibits, the subsequent October 3, 2013 Order indicated that exhibits "previously referenced in Intervenor's prefiled

¹ Staff Objections to Intervenor Exhibits for Contention 15 (Oct. 7, 2013) [hereinafter Staff Objections].

² Order (Requesting Intervenor Response to NRC Staff Evidentiary Objections) (Oct. 8, 2013) (unpublished).

³ Intervenor's Reply In Opposition to NRC Staff Objections to Intervenor Exhibits on Contention 15 (Oct. 18, 2013) [hereinafter Intervenor's Reply].

testimony or statement of position” would be considered.⁴ For this purpose, the Board provided multiple extensions to Intervenor, allowing submittal of exhibits to continue until October 4, 2013. Prior to that date, Intervenor submitted INTS 001-005, 008-011, 031, 056, 058, 060-063, 066-070, and the Board understands the Staff and the Applicant to have no objection to the filing of these exhibits.

Also prior to the October 4, 2013, Intervenor submitted several exhibits to which Staff objects for various reasons. First, while the Staff does not object to the submittal of INTS 007 (Arnold Gundersen’s 2009 Declaration in support of Contention 15) as an exhibit, they object to treatment of this document as pre-filed testimony. They argue that (1) the Declaration should be admissible only to the extent that it supports arguments in Intervenor’s pre-filed testimony;⁵ and that (2) INTS 006, which is only referenced within the Declaration, should be inadmissible as an exhibit supporting another exhibit.⁶ We agree that the 2009 Declaration may be admitted in evidence only to the extent that it supports arguments in Intervenor’s pre-filed testimony. Otherwise, we would in effect be authorizing an amendment to and expansion of Intervenor’s pre-filed written testimony months after the deadline for the filing of such testimony expired. Similarly, we will consider INTS 006 only to the extent that it directly or indirectly supports arguments in Intervenor’s pre-filed testimony.

Second, the Staff objects to INTS 057 and 059, both nonpublic exhibits, as outside the scope of Contention 15 because they relate to environmental issues.⁷ On this point, Intervenor rightly argue that these exhibits are relevant because they show discrepancies resulting from the

⁴ Order (Granting Intervenor’s Motions for Extension of Time, Requesting List of Objections from the NRC Staff, and Explaining Board Procedure in the Event of a Continued Government Shutdown) 2 (Oct. 3, 2013) (unpublished).

⁵ Staff Objections at 3-4

⁶ *Id.* at 4.

⁷ *Id.* at 5.

alleged lack of quality assurance.⁸ As such, they are within the scope of Contention 15 and the Board rejects the Staff's objection to their admissibility.

The Staff objects to all of Intervenor's exhibits filed after the October 4, 2013 deadline (INTS 034-035, 037-049, 064).⁹ Despite multiple extensions of time and the Board's declaration that "[n]o additional extensions will be granted," the Intervenor's still failed to file all of their exhibits by October 4, 2013. The Board therefore will not allow these late-filed exhibits to come into evidence, unless the Board determines during the evidentiary hearing that their admission is essential to permit the Board to adequately evaluate the evidentiary record.

Finally, Intervenor's subsequently withdrew three documents submitted as exhibits INTS 027, 036, and 065.¹⁰ These, and Intervenor's previously withdrawn exhibits, will not be considered by the Board as evidence in this proceeding.

The Board therefore grants in part and rejects in part the Staff's objections to Intervenor's exhibits filed in relation to Contention 15. The exhibits for which an objection has been sustained will not be received into evidence. The exhibits for which the Board has overruled the Staff's objections may be offered into evidence to the extent consistent with the Board's ruling.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 23, 2013

⁸ Intervenor's Reply at 7-8.

⁹ Staff Objections at 5.

¹⁰ Intervenor's Reply at 5-7.

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)	
(Combined License))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Ruling on Staff Objections to Intervenor Exhibits)** have been served upon the following persons by Electronic Information Exchange.

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ORDER (Ruling on Staff Objections to Intervenor Exhibits)

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[Original signed by Brian Newell]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of October 2013