

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

February 4, 2014

ORDER

(Adopting Transcript Corrections, Denying Intervenors' Post-Hearing Motion for Admission for Excluded Exhibits, and Closing the Record)

On October 30 and October 31, 2013, this Board held an evidentiary hearing on Contentions 8 and 15 in Monroe, Michigan.¹

Now before the Board are (1) proposed transcript corrections from each of the parties,² (2) Intervenors' Post-Hearing Motion for Reconsideration for Admission of Excluded Intervenor

¹ See Notice of Hearing (Notice of Evidentiary Hearing and Opportunity to Provide Oral and Written Limited Appearance Statements), 78 Fed. Reg. 29,781-29,783 (May 21, 2013); see also Tr. at 271-712.

² Intervenors' Transcript Corrections for Adjudication Hearing (Dec. 5, 2013) [hereinafter Intervenors' Transcript Corrections]; Applicant's Proposed Transcript Corrections (Dec. 5, 2013); NRC Staff Proposed Transcript Corrections for Evidentiary Hearing on Contentions 8 and 15 (Dec. 5, 2013). This Order will collectively refer to these three documents as "Parties' Proposed Transcript Corrections."

Exhibits on Contention 15,³ Applicant's⁴ and the NRC Staff's⁵ Answers to Intervenors' Motion, and Intervenors' Reply.⁶

In addition to resolving these matters, the Board closes the evidentiary record.

1. Transcript Corrections

The Board adopts each of the parties' proposed transcript corrections.⁷ The transcript shall be deemed to reflect those corrections.

2. Intervenors' Post-Hearing Motion

On September 20, 2013, the Board issued an Order directing the NRC Staff and Intervenors to make technical corrections to their prefiled exhibits by September 26, 2013.⁸

On September 26, 2013, Intervenors filed a motion for an extension of time to file exhibits.⁹ On October 1, 2013, Intervenors filed a second motion for an extension of time.¹⁰

³ Intervenors' Post-Hearing Motion for Reconsideration for Admission of Excluded Intervenor Exhibits on Contention 15 (Dec. 27, 2013) [hereinafter Intervenors' Post-Hearing Motion].

⁴ Applicant's Response to Intervenors' Motion to Reconsider Exclusion of Untimely Exhibits (Jan. 6, 2014) [hereinafter Applicant's Answer].

⁵ NRC Staff Answer Opposing Intervenors' Post-Hearing Motion for Reconsideration of Excluded Exhibits on Contention 15 (Jan. 6, 2014) [hereinafter NRC Staff's Answer].

⁶ Reply in Support of Intervenors' Post-Hearing Motion for Reconsideration of Admission of Excluded Intervenor Exhibits on Contention 15 (Jan. 13, 2014) [hereinafter Intervenors' Reply].

⁷ See Parties' Proposed Transcript Corrections. As a note, on page 2 of Intervenors' transcript corrections, Intervenors propose the change "documents should be document's" on page 393 and line 3 of the transcript. It appears this change should be made on page 393 and line 5 of the transcript. See Intervenors' Transcript Corrections at 2; see also Tr. at 393, ll. 3–5 (Gundersen).

⁸ Licensing Board Order (Summarizing Pre-Hearing Conference) (Sept. 20, 2013) (unpublished).

⁹ Intervenors' Motion for Extension of Time for Submission of Exhibits and Prefiled Testimony with Exhibit References (Sept. 26, 2013).

¹⁰ Intervenors' Second Motion for Extension of Time for Submission of Exhibits and Prefiled Testimony with Exhibit References (Oct. 1, 2013).

The NRC Staff opposed the second motion for an extension of time and expressed concern over the filing of exhibits “not identified in prefiled testimony.”¹¹

On October 3, 2013, the Board (1) granted both motions for extensions of time, (2) established October 4, 2013 as the final submission deadline for Intervenors’ exhibits, stating that “[n]o additional extensions will be granted,” and (3) allowed the NRC Staff to submit objections to Intervenors’ exhibits.¹²

Intervenors filed exhibits from October 4 through October 7; specifically, Intervenors filed INTS 034, INTS 035, INTS 037 through INTS 049, and INTS 065 after the October 4 deadline.¹³

On October 7, 2013, the NRC Staff filed objections to several of Intervenors’ exhibits.¹⁴ Intervenors responded to the Staff’s objections on October 18, 2013.¹⁵

On October 23, 2013, the Board excluded the late-filed exhibits (INTS 034–035, 037–049, 064), “unless the Board determines during the evidentiary hearing that their admission is essential to permit the Board to adequately evaluate the evidentiary record.”¹⁶

At the close of the evidentiary hearing, Intervenors orally moved that the Board permit the excluded exhibits to be entered into evidence.¹⁷ The Board orally granted leave for

¹¹ See Staff Answer Opposing Intervenors’ Second Motion for Extension of Time to File Exhibits and Refile Testimony at 2 (Oct. 2, 2013).

¹² See Licensing Board Order (Granting Intervenors’ Motion for Extension of Time, Requesting List of Objections from NRC Staff, and Explaining Board Procedure in the Event of a Continued Government Shutdown) (unpublished) (Oct. 3, 2013).

¹³ See Licensing Board Order (Ruling on Staff Objections to Intervenor Exhibits) at 3 (Oct. 23, 2013) (unpublished) [hereinafter Ruling on Staff Objections].

¹⁴ Staff Objections to Intervenor Exhibits for Contention 15 (Oct. 7, 2013).

¹⁵ Intervenor’s Reply In Opposition to NRC Staff Objections to Intervenor Exhibits on Contention 15 (Oct. 18, 2013).

¹⁶ Ruling on Staff Objections at 3.

¹⁷ See Tr. at 649, ll. 13–16 (Lodge).

Intervenors to file a written motion of reconsideration of the excluded evidence.¹⁸

On December 27, 2013, Intervenors filed a post-hearing motion for reconsideration for admission of the excluded exhibits.¹⁹ In its motion, Intervenors request that the Board allow the excluded exhibits into evidence because their expert, Arnold Gundersen, relied on the excluded exhibits in his testimony.²⁰

Applicant opposes Intervenors' post-hearing motion arguing that (1) it does not meet the standards for reconsideration of a prior Board decision under 10 C.F.R. § 2.323, including not being timely filed within ten days of the evidentiary hearing, and (2) the Intervenors failed to show that admission of the excluded exhibits is essential to an evaluation of the evidentiary record by the Board.²¹

The NRC Staff also opposes Intervenors' post-hearing motion arguing that (1) Intervenors did not meet the Board's standard set out in its October 23 Order of demonstrating that the exhibits are essential for the Board to adequately review the evidentiary record; and (2) the Staff reiterates its objections it originally raised in its October 7 filing in regards to Intervenors' late-filed exhibits.²²

In their Reply to Applicant's and Staff's Answers, Intervenors contend that that their post-hearing motion is timely²³ and that they have shown that the excluded exhibits are essential for the Board to adequately evaluate the evidentiary hearing.²⁴

¹⁸ Tr. at 709–10 (J. Spritzer).

¹⁹ See Intervenors' Post-Hearing Motion at 1–2.

²⁰ See id. at 2-5.

²¹ See Applicant's Answer.

²² See NRC Staff's Answer.

²³ Intervenors' Reply at 1–2.

²⁴ Id. at 2-4.

Even if the Board were to ignore the timeliness issues with the submission of the late-filed exhibits (INTS 034–035, 037–049, 064) and the submission of the instant post-hearing motion, the Board finds no reason to admit the late-filed exhibits. The Board reviewed the parties' filings and the exhibits in question and found that they would not add anything of significance to the record. Therefore, after determining that the late-filed exhibits are not essential to the Board's evaluation of the evidentiary record, the Board's October 23 Order stands as is and the late-filed exhibits (INTS 034–035, 037–049, 064) will remain excluded.

Intervenors' Post-Hearing Motion for Reconsideration for Admission of Excluded Intervenor Exhibits on Contention 15 is denied.

3. Closing of the Evidentiary Record

As the Board has now resolved all pending matters related to the content of the evidentiary record, the record is now closed. Any request after this date to add any new evidence to the record will have to satisfy the reopening criteria of 10 C.F.R. § 2.326.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 4, 2014

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 **ORDER (Adopting Transcript Corrections, Denying Intervenor's Post-Hearing Motion for Admission for Excluded Exhibits, and Closing the Record)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara Sola]
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Dated at Rockville, Maryland
 this 4th day of February 2014