NUCLEAR REGULATORY COMMISSION





In the Matter of:

DETROIT EDISON COMPANY
)
DOCKET NO. 50-341-OL
(Enrico Fermi Plant, Unit 2)

DATE: July 22, 1981 PAGES: 180 thru 210

AT: Detroit, Michigan

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ALDERSON / REPORTING

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	APPEARANCES:
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3	Company
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14	On behalf of the Nuclear Regulatory Commission:
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15	COLLEEN WOODHEAD, Esq. SHELDON TRUBATCH, Esq.
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18	FRANK KURON
	5739 Nelson Drive
19	New Port, Michigan
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## PROCEEDINGS

- 2 CHAIRMAN MILHOLLIN: Good morning, ladies and
- 3 gentlemen. This is a prehoring conference in the matter of
- 4 Detroit Edison Company's application for a license to
- 5 operate the Enrico Fermi Atomic Power Plant Unit 2 in Monroe
- 6 County, Michigan.
- We are an Atomic Safety and Licensing Board which
- 8 has been designated by the Nuclear Regulatory Commission for
- 9 the purpose of ruling on Detroit Edison's application.
- 10 On my right is Dr. David R. Schink, an
- 11 environmental scientist from Texas A&M University. On my
- 12 left is Mr. Frederick Shon, a nuclear engineer with the
- 13 Nuclear Regulatory Commission.
- 14 My name is Gary Milhollin. I am an actorney and
- 15 also a professor at the University of Wisconsin Law School.
- 16 I will now as the parties to introduce themselves.
- 17 We can begin with the Applicant.
- 18 MR. VOIGT: Good morning, gentlemen. My name is
- 19 Harry H. Voigt from the firm of LeBoeuf, Lamb, Leiby &
- 20 MacRae, Washington, D. C. I am counsel for the Applicants
- 21 in this proceeding.
- 22 My co-counsel is Peter A. Marquardt from the
- 23 Detroit Edison Company here in Detroit.
- 24 Also appearing with me is my associate, L. Charles
- 25 Landgraf.

- 1 CHAIRMAN MILHOLLIN: Good morning. Thank you.
- 2 Intervenor.
- 3 MR. SIEGFRIED: Good morning. My name is Kim
- 4 Siegfried. I need to briefly explain my appearance. I was
- 5 formerly the attorney for the Intervenor CEE. I took a new
- 6 position as United Steel Workers' attorney here in Michigan,
- 7 which forced me to withdraw as primary counsel. Mr. David
- 8 Howell is now the primary attorney for the Intervenors.
- 9 David told me last night he had a probate matter to handle
- 10 this morning. He should be with us in a while.
- I was going to use the term "limited appearance,"
- 12 but I was told by counsel for NRC not to use that particular
- 13 expression, but to appear on behalf of the Intervenors
- 14 solely until Mr. Howell might appear at the proceedings here
- 15 today, and I cannot formully enter, you know, a permanent
- 16 appearance in this matter, but I am here to represent the
- 17 Intervenors, and I have the authority to act on their behalf.
- 18 CHAIRMAN MILHOLLIN: We will consider anything you
- 19 say as binding on the Intervenors.
- 20 MR. SIEGFRIED: Yes, there is no problem.
- 21 CHAIRMAN MILHOLLIN: Fine, thank you.
- MR. SIEGFRIED: And with me Is Mr. Frank Kuron who
- 23 is a former construction worker employed at the plant and a
- 24 member of CEE.
- 25 CHAIRMAN MILPOLLIN: Good morning. Thank you.

- 1 MR. KURON: I would just also like to appear as a
- 2 father, grandfather, resident in the area, citizen taxpayer,
- 3 and last, but not least, since all of this began, I have
- 4 gotten myself elected County Commissioner in the very area
- 5 that we are concerned with. But I will be talking strictly
- 6 for myself, not as a Commissioner, just as a citizen
- 7 taxpayer, that is all.
- 8 CH'IRMAN MILHOLLIN: Staff.
- 9 MS. WOODHEAD: Good morning, gentlemen. My name
- 10 is Colleen Woodhead. I am counsel for the NRC Staff.
- 11 On my right is Assistant Chief Hearing Counsel
- 12 Sheldon Trubatch.
- 13 CHAIRMAN MILHOLLIN: Good morning. Thank you.
- 14 I might say a few words about the background of
- 15 this case before we begin. The words are going to be
- 16 familiar to all of you I am sure.
- 17 The record should indicate that Detroit Edison
- 18 received a construction permit for this reactor on September
- 19 26, 1972. On September 11, 1978, the Commission published a
- 20 notice of opportunity for hearing on the application for an
- 21 operating license. The Citizens for Employment and Energy
- 22 then intervened and filed a series of contentions, some of
- 23 which have been admitted as issues in controversy.
- 24 The parties have already conducted a first round
- 25 of discovery which ended in late 1979. This case has not

- 1 seen much activity since then because of a revision in the
- 2 construction schedule. In response to an initiative by the
- 3 Applicant, the parties agreed that today would be a
- 4 convenient time for setting a schedule for further
- 5 proceedings, and in response to this initiative, we, the
- 6 Board, announced on June 18, 1981, that this prehearing
- 7 conference would be held.
- 8 We directed the parties to be prepared to discuss
- 9 the following items. They are substantially the same items
- 10 that the Applicant suggested we discuss: first, a schedule
- 11 for conclusion of discovery; second, a schedule for the
- 12 final prehearing conference; a schedule for the service of
- 13 testimony; a schedule for the evidentiary hearing; the
- 14 refinement of contentions; and finally, the possibility of a
- 15 visit to the site by the Board.
- 16 Perhaps it is not necessary for me to remind
- 17 everyone before we begin of what this Board's jurisdiction
- 18 is with respect to the application.
- 19 The staff has reviewed the application in great
- 20 detail, and the staff will publish a series, and has
- 21 published some reports which contain the fruits of this
- 22 investigation for evaluation.
- 23 The draft Environmental Impact Statement was
- 24 published in April of 1981. The Safety Evaluation Report,
- 25 known as the SER, was published last Friday, I am advised,

- 1 July 17, 1981. And the final Environmental Statement is
- 2 scheduled to be published on August 31, 1981, and the
- 3 supplement to the Safety Evaluation Report is scheduled to
- 4 be published also on August 31, 1981.
- 5 Our responsibility as a board is not to review the
- 6 adequacy of the staff's work on these reports. Our
- 7 jurisdiction is limited to hearing evidence on and ruling on
- 8 contentions by parties who intervene in the requested
- 9 hearing.
- 10 Before taking up our agenda, I would like to ask
- 11 whether there are preliminary matters which any party would
- 12 like to bring up.
- 13 MS. WOODHEAD: All right. I shall bring up the
- 14 fact that there is a change in the final SER from the one
- 15 that you just read on my previous information. We
- 16 discovered this approximately a week or so ago, that the
- 17 Applicant's emergency plan will not be provided to the
- 18 Commission until sometime in mid-March, I believe. But the
- 19 significant thing is that the staff's review of the
- 20 Applicant's emergency plan probably will not be available as
- 21 the final supplement to the SER until mid- or late April, so
- 22 that the staff's documents will be complete as previously
- 23 scheduled except for this one item which will be delayed
- 24 until spring.
- 25 CHAIRMAN MILHOLLIN: So you predict mid-March

- 1 before the emergency plan will arrive at the NRC.
- MS. WOODHEAD: Well, we have at the moment the
- 3 major portion of it, but as I understand, there are
- 4 additional items of information and some actual exercises
- 5 required under the new emergency plan which will not be
- 6 complete until March.
- 7 Perhaps Mr. Voigt will give you better information
- 8 on the score.
- 9 MR. VOIGT: I think we have submitted all of the
- 10 written elements that are required, but it is correct, of
- 11 course, that the plant has to be tested by an exercise, and
- 12 it also has to be evaluated by the NRC and the Federal
- 13 Emergency Management Agency. The exercise has been
- 14 scheduled for the first two weeks -- sometime in the first
- 15 two weeks of February 1982, and as a result of that
- 16 scheduling, it is correct that the final review by the
- 17 federal agencies will not be completed until sometime after
- 18 the exercise, and we have been told that the final staff
- 19 document, namely, a supplemental SER, is scheduled to be
- 20 issued by April 30, 1982.
- 21 So I think we are a little further along in terms
- 22 of our submittals than staff counsel has indicated. But the
- 23 bottom line is still the same, namely that the final
- 24 avaluation will not be available until April.
- 25 CHAIRMAN MILHOLLIN: Thank you.

- How many contentions will be affected by that
- 2 schedule, just one?
- 3 MS. WOODHEAD: Just one.
- 4 CHAIRMAN MILHOLLIN: Just one contention?
- 5 MR. VOIGT: Contention 8, which has to do with the
- 6 evacuation route from a geographic area adjacent to the
- 7 plant, in our view, could be addressed and disposed of
- 8 without awaiting the completion of the review of the
- 9 exercise.
- 10 However, as I am sure the Board knows, staff
- 11 normally does not like to conclude a hearing on a matter
- 12 until the SER relating to that matter has been published.
- 13 So I think we are in a situation where, while we
- 14 might be able to address it, staff would not want to address
- 15 it until after the supplemental SER was available.
- 16 (Board conferring.)
- 17 CHAIRMAN MILHOLLIN: What would the staff's
- 18 response be to that suggestion?
- 19 MS. WOODHEAD: Well, it is really not a matter of,
- 20 at this point, not being willing to address it. We would
- 21 certainly be willing. It is that at this point the staff is
- 22 not able to give the Board a firm date at which time they
- 23 will be able to address the particular point. Because of
- 24 their assignments on the staff, they are required to review
- 25 certain matters on their own schedule, and although it is

- 1 possible to review this particular point earlier, we also
- 2 have to coordinate with FEMA, and this is the point on which
- 3 I am probably ignorant as to what they might be able to do.
- 4 In other words, their review must come before
- 5 ours, even if it is only on one item, and since we just
- 6 recently learned that there would be a significant delay in
- 7 the emergency planning review, I have not been able at this
- 8 point to investigate further the possibility of escalating
- 9 the review by the two federal agencies on this one point.
- 10 But I would certainly like to do so simply to move the
- 11 proceeding forward, if it is at all possible. But it is
- 12 just information I do not have at the moment.
- 13 CHAIRMAN MILHOLLIN: Would the staff be prepared
- 14 to take a position on the contention without having done
- 15 that work?
- MS. WOODHFAD: This is something that I would have
- 17 to check with my client's staff on. I do not know, and they
- 18 were not able to tell me before I left the office whether or
- 19 not they could get to this sort of out of sequence in their
- 20 normal review matters.
- 21 But I would certainly require and hope that that
- 22 would be the case.
- 23 CHAIRMAN MILHOLLIN: Are there any other
- 24 preliminary matters?
- 25 MR. VOIGT: I have none.

- MR. SIEGFRIED: I do not have any that cannot wait until later in the proceeding.
- 3 MS. WOODHEAD: I have none other.
- CHAIRMAN MILHOLLIN: The first item on the agenda, then, would be the matter of discovery.
- Perhaps it might be best just to ask the parties to tell us what proposed any further discovery the parties think would be required.
- 9 MR. VOIGT: On behalf of the Applicant, we do not 10 consider that we would require any further discovery. We 11 have had a full round of discovery on the contentions.
- I would further state that it is our position that
  the time for discovery was fixed by prior Board orders and
  that expired. So we feel basically the discovery has been
  to completed.
- 16 CHAIRMAN MILHOLLIN: Intervenor?
- MR. SIEGFRIED: I understand the final SIS is

  18 supposed to come out August 31, and the final SER also

  19 August 31. Intervenor would request a timeframe of two

  20 weeks following August 31 for any possible discovery that we

  21 might have. I think there is a strong possibility there may

  22 be no further discovery on our part, but we would like to

  23 wait until the final SER and EIS are out.
- 24 CHAIRMAN MILHOLLIN: You would like an opportunity 25 to look at those iocuments to see if you might have further

- 1 discovery?
- MR. SIEGFRIED: Yes.
- 3 CHAIRMAN MILHOLLIN: Staff?
- 4 MS. WOODHEAD: Staff has no objection to the
- 5 Intervenor's suggestion on discovery, and the staff has no
- 6 desire for any further discovery.
- 7 CHAIRMAN MILHOLLIN: Very well.
- 8 MR. VOIGT: The discovery in question, if any,
- 9 obviously would be directed solely to the staff, so the
- 10 Applicant would have no objection to that.
- 11 (General laughter.)
- 12 CHAIRMAN MILHOLLIN: We seem to be blazing through 13 our schedule.
- 14 (General laughter.)
- 15 CHAIRMAN MILHOLLIN: That is certainly a good sign.
- The next item which we mentioned in our order was

  17 a schedule for the hearing and the things which are normally

  18 associated with it, such as the prehearing conference and

  19 service of testimony.
- 20 Shall we hear your views on that subject?
- MR. VOIGT: Judge Milhollin, there has been some
  22 preliminary discussion among counsel with respect to some of
  23 the contentions, and I think it might be helpful if we got
  24 that on the record before we talk about a schedule for the
  25 hearing because it may affect the thinking of the Board as

- i to the schedule.
- 2 CHAIRMAN MILHOLLIN: Fine. It occurred to me that
- 3 that might also be a good procedure.
- 4 Let's io that, shall we?
- 5 Mr. Siegfried, would you like to begin?
- 6 MR. SIEGFRIED: Yes, sir
- 7 In your original order and in subsequent orders
- 8 you had left some areas open as far as the Intervenor
- 9 perhaps adding to some of its contentions, refining them.
- 10 At least our understanding, looking at this latest order,
- 11 was that is what it was related to. However, in discussions
- 12 that I had yesterda; evening with Mr. Howell and
- 13 representatives of CEE, what we would like to do I think at
- 14 this point is withdraw a couple of the contentions that we
- 15 have had previously and really narro it to the things that
- 16 we are interested in and just proceed on those. I think
- 17 that makes the best use of our very, very limited resources.
- 18 Specifically, we wish to retain Contention 4 which
- 19 relates to our concerns about the employer's quality
- 20 assurance/quality control program, and we believe that
- 21 contention is very specific.
- We would retain Contention 5 which relates to the
- 23 lawyers -- the Applicant's proposed monitoring program.
- 24 We would like to withdraw Contention 6A, B, and C
- 25 at this time.

- 1 CHAIRMAN MILHOLLIN: That is all of 6, is that
- 2 right?
- 3 MR. SIEGFRIED: That is all 6, not that we do not
- 4 have concerns in those areas, but we just do not have the
- 5 expert witnesses to proceed, and it is just a waste of time.
- 6 Contention 8 we clearly wish to retain. This
- 7 relates to the evacuation of residents towards the plant
- 8 from one particular geographic area.
- 9 Contention 11, we had previously indicated that we
- 10 were willing to withdraw it, and the Applicant, of course,
- 11 wanted us to withdraw it, but because of the TMI and other
- 12 problems, the Board never really ruled on that issue. But
- 13 11 we would state again today we are willing to withdraw.
- 14 And finally 14A, which has also been the subject
- 15 of some discussions with the NRC Staff we would also like to
- 16 withdraw.
- I am not sure what else was left. Loading. I
- 18 think there was something about hospitals in the evacuation
- 19 plan. We do not want to proceed on that. And there were
- 20 some generic issues.
- 21 Frankly, it has been two years. I frankly cannot
- 22 even recall the generic issues.
- 23 CHAIRMAN MILHOLLIN: We are talking about
- 24 Contention 14 now, is that right?
- MR. VOTST: No, Your Honor, 9 and 10 were the two

- 1 unspecified contentions.
- 2 CHAIRMAN MILHOLLIN: All right, yes.
- 3 MR. VOIGT: They were given further time to refine
- 4 them, and as I understand it, he is now stating that he
- 5 wishes to withdraw 9 and 10.
- 6 CHAIRMAN MILHOLLIN: Okay.
- 7 MR. SIEGFRIED: First I have to find them.
- 8 CHAIRMAN MILHOLLIN: Yes, we are familiar with
- 9 them. Those are the ones which the Board ruled could be
- 10 supplemented by further pleadings after the staff's
- 1: documents were published, and you wish to withdraw both of
- 12 those.
- 13 MR. SIEGFRIED: As I read the original
- 14 contentions, 9 related to --
- 15 CHAIRMAN MILHOLLIN: Electric cables I beliee.
- 16 MR. SIEGFRIED: No.
- 17 (Board conferring.)
- 18 CHAIRMAN MILHOLLIN: We have a new 9?
- 19 (Board conferring.)
- MS. WOODHEAD: Judge Milhollin.
- 21 CHAIRMAN MILHOLLIN: There were stirulated
- 22 contentions, of which this is No. 9?
- 23 MS. WOODHEAD: No. The stipulation in Paragraph
- 24 II agrees that CEE will have an opportunity to formulate
- 25 contentions out of their original Paragraphs 9 and 10 which

- 1 dealt with emergency facilities and unresolved generic
- 2 issues.
- 3 MR. SIEGFRIED: Nire is actually the hospital
- 4 contention, and that there is clearly no problem with. And
- 5 No. 10 is the generic safety problems for BWRs.
- Now, our position is we want to withdraw 10 also.
- 7 CHAIRMAN MILHOLLIN: Very well. So you are
- 8 withdrawing 9 and 10 in their entirety.
- 9 MR. SIEGFRIED: Yes, again on the basis, not that
- 10 we do not have these concerns, but if we are not going to be
- 11 able to provide expert witnesses and we are not going to be
- 12 able to proceed, I do not see any sense in keeping them on
- 13 the table.
- 14 CHAIRMAN MILHOLLIN: So we are left with No. 8,
- 15 No. 5 and No. 4.
- 16 MR. SIEGFRIED: Yes.
- 17 CHAILMAN MILHOLLIN: In light of that, perhaps,
- 18 unless there is -- is there any discussion about the
- 19 contentions, their for, refinement and so forth?
- 20 MR. VOIGT: We had previously stipulated to the
- 21 statements of the contentions 4, 5, and 8, and the Board had
- 22 approved that statement in the stipulation. We have no
- 23 desire or intent to depart from the stipulation. We have
- 24 agreed that they are suitably framed for hearing, and we are
- 25 prepared to go forward on that basis.

- 1 CHAIRMAN MILHCLLIN: Very well.
- So that takes care of another item on our agenda.
- 3 (General laughter.)
- 4 CHAIRMAN MILHOLLIN: And at least the question of 5 scheduling.
- MR. VOIGT: With respect to scheduling, I would suggest that we start with trying to fix some hearing dates and then work backwards.
- 9 Is that agreeable?
- 10 CHAIRMAN MILHOLIIN: Yes.
- 11 MR. VOIGT: Fine.
- Well, as we had indicated in our letter to the

  13 Atomic Safety and Licensing Board, it is our understanding

  14 that this case has been tentatively scheduled on the NRC's

  15 internal scheduling for February of 1982.
- As you have heard earlier this morning, we are

  17 scheduling the emergency plan exercise for sometime in the

  18 first two weeks of that month. A number of people at the

  19 plant are necessarily involved in that exercise. They are

  20 in some cases people the will probably be witnesses with

  21 respect to the remaining contentions, or in other cases are

  22 people who, in any event, should be present at the hearing

  23 to provide technical assistance.
- We do not think it would be feasible to have the 25 hearing overlap or immediately follow the emergency plan

- 1 exercise, and what we would like to suggest -- and I have
- 2 discussed this with other counsel -- is that we have an
- 3 evidentiary hearing beginning on Tuesday, March 2 of 1982.
- Now, given the fact that we are down to the three
- 5 contentions, I would think it might be possible that the
- 6 hearing could be completed during those four days. That is,
- 7 of course, subject to the open question of whether we will
- 8 be able to proceed with Contention 8 at that time. If it
- 9 turns out that we are not able to proceed with Contention 8
- 10 at that time, then I think at the final prehearing
- 11 conference we will have to review the proceedings and
- 12 perhaps ask the Board to set aside one, perhaps for safety's
- 13 sake, two days for a wrap-up hearing later on to finish
- 14 Contention 8.
- 15 CHAIRMAN MILHOLLIN: So you would propose that we
- 16 take up all matters except possibly Contention 8 on March 2,
- 17 1982.
- 18 MR. VOIGT: I would like to keep them all on the
- 19 table, Your Honor, but with the understanding which we all
- 20 share, whether or not we are able to take up 8 at that time
- 21 is still contingent.
- 22 MR. SIEGFRIED: I have no objection top March 2.
- 23 MS. WOODHEAD: That is satisfactory with the staff.
- 24 CHAIRMAN MILHOLLIN: Very well. We at least have
- 25 an agreement as to a proposed hearing date.

- 1 Would the parties like to suggest times for the 2 other matters, working backward from March 2?
- 3 MR. VOIGT: I have talked to the staff. I have
- 4 not had a chance to talk directly to Mr. Siegfried. It was
- 5 our feeling it would be appropriate to have the prepared
- 6 direct testimony served about 20 days before the hearing,
- 7 and giving due allowance for mailing, I would like to
- 8 propose that the testimony be mailed on February 5, 1982,
- 9 which is a Friday. So the odds are at least that we have it
- 10 in hand 20 days prior to the hearing date.
- 11 MS. WOODHEAD: That is satisfactory with the staff.
- 12 MR. SIEGFRIED: Could we make it February 8?
- 13 MR. VOIGT: I do not strenuously object to that.
- 14 Of course, if it goes in the mail on Monday, you may not see
- 15 it until the end of the week.
- 16 MR. SIEGFRIED: Just knowing my schedule and
- 17 dates, it would really be helpful to have a weekend perhaps.
- 18 MR. VOIGT: Actually, if we make it Monday, could
- 19 we arrange perhaps for Detroit Edison to pick up a copy of
- 20 the testimony?
- 21 MR. SIEGFRIED: Sure.
- 22 CHAIRMAN MILHOLLIN: All right. so that would be
- 23 Monday the 8th.
- MR. SIEGFRIED: 5:00 p.m.
- 25 CHAIRMAN MILHOLLIN: Pardon me?

- 1 MR. SIEGERIED: 5:00 p.m.
- 2 (General laughter.)
- 3 CHAIRMAN MILHOLLIN: With the understanding that
- 4 it will be picked up.
- 5 (General laughter.)
- 6 MR. SIEGFRIED: As sole counsel, I have learned to 7 give myself time.
- 8 CHAIRMAN MILHOLLIN: Very well.
- 9 Sha'l we have the final prehearing conference on 10 the day of the hearing, or is it your pleasure to have it 11 before?
- MR. VOIGT: Again, I have discussed this the staff counsel and not really with Mr. Siegfried.
- It was our view, in light of the open-ended nature

  15 of when we might be able to deal with Contention 8, that it

  16 might be worth establishing a tentative date for a

  17 prehearing conference sometime in January. If all goes

  18 well, we could advise the Board that it was unnecessary to

  19 meet on that date, but we thought it might be well to

  20 establish the date in case we needed to use it.
- CHAIRMAN MILHOLLIN: What value would you expect

  to derive from having a prehearing conference on that day?

  MR. VOIGT: Well, I must confess our discussion

  the withdrawal of some of these contentions, so

  in light of the withdrawal, your question is a pertinent one.

I suppose we could advise the Board by letter

without necessarily having a formal meeting as to where we

thought we were going with Contention 8, and then as you

4 suggest, schedule any remaining proceedings, and the

5 prehearing conference would last about an hour on the first 6 day of the evidentiary hearing.

7 CHAIRMAN MILHOLLIN: It might be possible to 8 schedule it now for that time, that is, on the day of the 9 evidentiary hearing, and then if things develop in such a 10 way that it would become advisable to get together earlier, 11 you could make a request.

12 MR. VOIGT: All right.

13 CHAIRMAN MILHOLLIN: Does that sound reasonable?

14 MS. WOODHEAD: Yes, that is agreeable to us.

MR. SIEGFRIED: Let me comment on Contention 8
16 also.

We are willing, as far as the Intervenors, as long
18 as Edison's proposed evacuation plan for the particular
19 individuals that we are concerned about, I assume they are
20 not going to change it to helicopter the people out or come
21 up with some other way of perhaps saving their lives, then
22 we are tilling to proceed even if this final supplement has
23 not been, you know, published. I mean, our purpose in this
24 proceeding has never been to delay it. We just want these
25 issues heard by the board, and you now, have you make a

- 1 decision.
- 2 So we are willing to have you go ahead, you know.
- 3 NRC has its own internal procedures, but you know, we are
- 4 willing to go ahead.
- 5 CHAIRMAN MILHOLLIN: So I suppose that leaves the
- 6 staff with the responsibility of perhaps not being ready to
- 7 go forward if things should work out that way.
- 8 MS. WOODHEAD: Well, given the Intervenor's lack
- 9 of objection to the formal official agency review in this
- 10 matter, in the form of a published document, this leads me
- 11 to believe that the staff could very well go forward on this
- 12 one item ahead of schedule and be ready to go to hearing,
- 13 assuming that the Applicant's information is complete within
- 14 the agency, and that the staff can review it, which I
- 15 believe is possible if not already complete. In that vent,
- 16 it looks very likely to me we could go to hearing on the
- 17 evacuation route contention by March 2.
- 18 CHAIRMAN MILHOLLIN: I am just looking --
- 19 (Board conferring.)
- 20 COMMISSIONER SHON: The Board now wonders whether
- 21 it might not be possible to move this along even more
- 22 rapidly. We moved the date for the evidentiary hearing from
- 23 February into March because of an actual interference with
- 24 the people who would be tied up in making this emergency
- 25 drill in February. However, I think the original February

- 1 date was probably set from considerations that involved a
- 2 rather arbitrary schedule of when staff originally expected
- 3 to have their SER out, and it might be, it occurs to the
- 4 Board now, it might be possible to get the bulk of the
- 5 hearing out of the way even before that, in other words,
- 6 avoid the conflict in February ot by delaying matters but
- 7 by speeding them up.
- 8 Could we look at the whole schedule with that in
- 9 mind now, the idea that we might go to hearing, say, in
- 10 December or in January or November or something like that?
- 11 How would that strike people, with the
- 12 understanding that if indeed Contention 8 cannot be
- 13 completely dealt with until after the staff has its report
- 14 out, we will come back in April and take a few days there or
- 15 in May or whenever. But if we can deal with Contention 8,
- 16 everything could be wrapped up by January or something like
- 17 that.
- 18 Would the parties address themselves to that
- 19 notion?
- 20 MR. VOIGT: I would suggest, gentlemen, that we
- 21 consider recessing for about 20 minutes because this is
- 22 something that the parties obviously have not focused on. I
- 23 think it would be more useful for the parties themselves to
- 24 discuss the matter and then report back to you. And if at
- 25 that time it is necessary to have an on-the-record

- 1 discussion, fine. But I think an on-the-record discussion
  2 at this point is probably premature.
- 3 CHAIRMAN MILHOLLIN: Very well.
- 4 I would like to bring up one subject, perhaps. I
- 5 would like to bring up one subject before we break. I would
- 6 encourage you to think about the regulations which indicate
- 7 that emergency plans must satisfy certain requirements in
- 8 order for them to be acceptable. I have not looked at the
- 9 matter carefully, but I am just wondering to myself whether
- 10 it might not be necessary to wait for some kind of a formal
- 11 determination before the Board could act.
- 12 MR. VOIGT: Why don't we discuss that as well?
- 13 CHAIRMAN MILHOLLIN: Yes. I am suggesting to you
- 14 that you might suggest that among yourselves during the
- 15 break.
- 16 So we will adjourn temporarily.
- 17 (A brief recess was taken.)
- 18 CHAIRMAN MILHOLLIN: The conference will now resume.
- 19 Perhaps the parties would like to inform us as to
- 20 plans for a site visit.
- 21 MR. VOIGT: At the request of the Board, we have
- 22 made arrangements during the recess for the Board and
- 23 representatives of the parties to have an informal visit to
- 24 the site and site area. The visit to the on-site portion
- 25 will begin at 1:00 p.m., and arrangements are being made to

- 1 provide transportation for the Board and the staff.
- 2 It is our understanding that the Intervenors have
- 3 their own transportation.
- 4 There will be a general tour of the site, plus an
- 5 opportunity to see the road that is involved in Contention 8.
- 6 CHAIRMAN MILHOLLIN: Thank you.
- 7 The Board's understanding is that this visit is
- 8 agreeable to all parties, and that all parties will be
- 9 represented during the visit.
- 10 MR. SIEGFRIED: Yes.
- 11 MS. WOODHEAD: That is correct.
- 12 MR. VOIGT: That is correct.
- 13 CHAIRMAN MILHOLLIN: Is there any other matter
- 14 which any party would like to place before us at this time?
- MS. WOODHEAD: Judge Milhollin, one preliminary
- 16 matter. I believe counsel for CEE has arrived here, and
- 17 perhaps would --
- 18 CHAIRMAN MILHOLLIN: Yes, the record should
- 19 reflect that.
- 20 Would the counsel for Intervenor please identify
- 21 himself?
- 22 MR. HOWELL: Yes. My name is David E. Howell,
- 23 H-o-w-e-1-1.
- 24 CHAIRMAN MILHOLLIN: Thank you, Mr. Howell.
- 25 MR. VOIGT: Judge Milhollin, during the recess,

- 1 the parties did discuss the Board's suggestion and request
- 2 that we consider advancing the hearing, and the parties have
- 3 agreed that it would be feasible to commence the hearing on
- 4 December 1, subject, of course, to the availability of the
- 5 members of the Board.
- 6 (Board conferring.)
- 7 COMMISSIONER SHOW: What is the day? I do not
- 8 have that.
- 9 MR. VOIGT: That is a Tuesday.
- 10 COMMISSIONER SHON: That is a Tuesday also.
- 11 (Board conferring.)
- 12 CHAIRMAN MILHOLLIN: That, at least for the
- 13 moment, seems to be convenient for the Board.
- 14 MR. VOIGT: Very well.
- 15 CHAIRMAN MILHOLLIN: With the understanding that
- 16 if we go beyond that week, that it may not be possible for
- 17 us to continue the next week.
- 18 MR. VOIGT: I would think, unless we have an
- 19 extraordinary number of limited appearances, that we ought
- 20 to be able to finish that week, and I would add that
- 21 depending on how things are going, we might either take
- 22 limited appearances or have a couple of hours of evidentiary
- 23 presentation in an evening.
- 24 CHAIRMAN MILHOLLIN: Is that agreeable to the
- 25 parties?

- 1 MS. WOODHEAD: It is agreeable to the staff.
- MR. SIEGFRIED: It is agreeable to us.
- 3 CHAIRMAN MILHOLLIN: Okay.
- 4 MR. VOIGT: Working backward from that hearing
- 5 date, I believe we are all agreed that we would serve
- 6 prepared direct testimony on Monday, November 9, again with
- 7 the understanding that Detroit Edison will pick up CEE's
- 8 testimony.
- 9 CHAIRMAN MILHOLLIN: Very well.
- 10 MR. VOIGT: And I think in light of our prior
- 11 discussion, we do not really need to have a separate,
- 12 independent, prehearing conference.
- 13 If you want for the record to convene a prehearing
- 14 conference on December 1, we could do that.
- 15 CHAIRMAN MILHOLLIN: Yes. It might be useful for
- 16 us to indicate that our disposition would be to have a
- 17 prehearing conference at the outset of the hearing.
- 18 Thank you, Mr. Voigt.
- 19 Are there any other matters that you would like to
- 20 bring up?
- 21 MR. VOIGT: Yes, sir.
- 22 CHAIRMAN MILHOLLIN: Go ahead.
- 23 MR. VOIGT: I think we have covered the agenda,
- 24 including Item F, which we did not really plan to conclude
- 25 today.

- 1 However, before the recess the Board had raised a
- 2 further question concerning your ability to conclude this
- 3 proceeding prior to the final evaluation of the emergency
- 4 plan.
- 5 CHAIRMAN MILHOLLIN: Yes.
- 6 MR. VOIGT: And it is the position of the
- 7 Applicants that the validity of the emergency plan is not a
- 8 matter in controversy. The sole matter in controversy is
- 9 the evacuation route from Stoney Point. As to that, there
- 10 will be prepared testimony and findings by the Board, and it
- 11 would be our position that you can and should issue a final
- 12 initial decision with findings on the matters in
- 13 controversy, and it would be up to the Director of Nuclear
- 14 Regulation, then, to assure that the final federal review of
- 15 the emergency plan is completed before operation is actually
- 16 authorized.
- 17 CHAIRMAN MILHOLLIN: Thank you.
- 18 Does staff have a position on this subject?
- 19 MS. WOODHEAD: I would support the Applicant's
- 20 position with emphasis on the fact that the entire findings
- 21 necessary to issue the license, of course, could not be made
- 22 by the Board until final review and approval of the
- 23 emergency plan requirements by the staff. But in an
- 24 operating license case, it is entirely complete after the
- 25 issues in controversy are decided, and that beyond that, all

- 1 issues which are uncontested are to be reviewed and
- 2 determined by the Director of Nuclear Reactor Regulation.
- 3 MR. SIEGFRIED: Speaking on rehalf of the
- 4 Intervenor, the contention that was submitted is very
- 5 specific. We are not going to attempt to expand the
- 6 contention in this proceeding. We have major reservations
- 7 about the Applicant's emergency evacuation plans. We can
- 8 deal with that in other forums. We are not going to try to
- 9 expand our contentions.
- 10 I have no problems with what Mr. Voigt and counsel
- 11 for the NRC are saying.
- 12 (Board conferring.)
- 13 CHAIRMAN MILHOLLIN: Very well.
- 14 Are there any further matters?
- 15 MR. VOIGT: Nothing further on behalf of the
- 18 Applicants, Your Honor.
- 17 (Counsel for NRC Staff conferring.)
- 18 MR. SIEGFRIED: I just have two brief items. One
- 19 is we very much would like to have the hearings themselves
- 20 held down in Monroe, Michigan, which is t ? site. Mr. Kuron
- 21 I believe has mentioned be is a Commissioner of the County,
- 22 and hopefully between his role on the Commission, my own
- 23 contacts down there, and perhaps through the intervention of
- 24 the NRC, we can get a suitable locaton so that residents who
- 25 might be interested would be able to attend. This is quite

- 1 a distance for most people to have to drive 60 or 70 miles.
- 2 So that is something we would like the Board to explore.
- 3 And the only other item, particularly for Mr.
- 4 Kuron's benefit, will be a witness for the Intervenors, No.
- 5 D on your order, talks about a schedule for the service of
- 6 testimony. Counsel for the NRC has informed us that under
- 7 your procedures, unlike some other administrative procedures
- 8 that I am used to, that the direct testimony of our
- 9 witnesses will be in written form, that there will be, what,
- 10 cross examination, then an opportunity for redirect, I
- 11 believe, okay, so that Mr. Kuron will have an opportunity,
- 12 although his direct testimony will be in written form, will
- 13 have an opportunity to be cross examined, will have an
- 14 opportunity for redirect, i.e., will have his day in court.
- 15 CHAIRMAN MILHOLLIN: Yes. Each party will have
- 16 the opportunity to cross examine witnesses of other parties
- 17 who have filed written testimony.
- 18 MR. SIEGFRIED: All right.
- 19 MR. VOIGT: With respect to the Intervenor's
- 20 suggestion that the hearing be held near the site, the
- 21 Applicants have no objection to that, provided that the
- 22 Board can ob ain a suitable facility.
- MS. WOODHEAD: Two points perhaps for
- 24 clarification, the first being simply to advise the Board of
- 25 the staff's thinking on one item, and that is that we are

1 considering filing summary disposition on contentions that
2 we view a probing. We have not made a determination, but
3 simply to advise the Board that we may file one or several
4 motions for summary disposition, and secondly, perhaps to
5 clarify for the Intervenor the date of November 9 as to
6 exactly what we were speaking of, that perhaps we failed to
7 inform the Intervenor previously that prefiled testimony is
8 a standard practice in our proceedings. So the prefiled
9 written testimony that we do file is to be filed on November
10 9. That was the purpose of setting that date. And it would
11 be sent to the Board and the parties.

- 12 MR. SIEGERIED: All right.
- 13 hZ. WOODHEAD: Thank you. I thought perhaps there
  14 might be some misunderstanding on that point.
- 15 MR. SIEGFRIED: I have nothing further.
- 16 CHAIRMAN MILHOLLIN: The Board does not hear any
  17 further matters being advanced by any parties, so the
  18 hearing is hereby adjourned, and with the understanding that
  19 we will meet at 1:00 p.m. at the site for a visit to which
  20 all parties will be present.
- 21 (Whereupon, at 10:55 o'clock a.m., the prehearing 22 conference in the above-entitled matter was adjourned.)

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## NUCLEAR REGULATORY COMMISSION

n the matt	Ter of: DETROIT EDISON COMPANY Enrico Fermi Plant, Unit 2  Data of Proceeding: July 22, 1981	
	Docket Number: 50-341-OL	
	Place of Proceeding: Detroit, Michigan	

David Parker

Official Reporter (Typed)

(SIGNATURE OF REPORTER)