

August 17, 2004

Mr. William O'Connor, Jr.  
Vice President  
Nuclear Generation  
Detroit Edison Company  
6400 North Dixie Highway  
Newport, MI 48166

SUBJECT: DENIAL OF A REQUEST FOR NOTICE OF ENFORCEMENT DISCRETION  
FOR DETROIT EDISON COMPANY REGARDING FERMI 2  
(NOED NO. 04-3-001)

On August 8, 2004, your staff verbally requested that the Nuclear Regulatory Commission exercise discretion not to enforce compliance with certain actions required in the Fermi 2 Technical Specifications (TSs). Your staff stated that on August 9, 2004, at 2:00 a.m. (EDT), the allowed outage time specified in TS 3.8.1, "AC Sources - Operating," Required Action A.6, would expire requiring the plant be in at least hot shutdown within the next 12 hours. The allowed outage time of 7 days began at 2:00 a.m. (EDT) on August 2, 2004, when emergency diesel generator (EDG) 12 was made inoperable for planned maintenance. On August 6, in the course of post-maintenance testing, operators heard an abnormal noise from the EDG and shut it down. Subsequent disassembly of the EDG found damage to the scavenging blower that would require replacement and additional post-maintenance testing. Through your staff, you requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility as set forth in Section VII.C, of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. You requested that this discretion permit continued facility operation and be effective for an additional 7 days, from 2:00 a.m. (EDT) on August 9, 2004, to 2:00 a.m. (EDT) on August 16, 2004.

This letter documents the results of our telephone conference call on August 8, 2004, at approximately 5:00 p.m. (EDT) with Don Cobb and other members of your staff, and the principal NRC participants (listed in the enclosure to this letter), when the NRC verbally denied your request for an NOED. The Fermi 2 plant was operating at the time of the call, but was shut down on August 9 in accordance with TSs. The documentation of your request and justification for an NOED was submitted to us in your letter dated August 10, 2004.

During the conference call, your staff described the actions taken and plans to replace the scavenging blower and restore the EDG to operation. The blower had been inspected during the maintenance outage, but no maintenance work associated with the blower was conducted. Based on your blower and piping examination, you determined that the time necessary to replace the blower, inspect and clean the EDG, and restore the generator to service would have exceeded the TSs allowed outage time. You subsequently shipped the damaged blower to the

vendor for detailed analysis. As a result, an in-depth review of the failure was expected to require up to several weeks which could be complicated by the extensive damage to the blower components.

We described our NOED process in the beginning of the conference call. We informed you that the NOED process is designed to address unanticipated temporary non-compliances with license conditions and TSs. When an NOED is issued, it is recognized that the operating license will be violated, but the NRC is exercising discretion to not enforce compliance with the operating license for a specified time period. The NRC staff expects to issue NOEDs infrequently. Although requirements may dictate that a plant be shut down, refueling activities be suspended, or a plant startup be delayed, the NRC staff is under no obligation to issue an NOED. NOEDs are issued on a case-by-case basis, considering the individual plant circumstances. An NOED will be issued only if the NRC staff is clearly satisfied that such action is warranted from a public health and safety standpoint.

In order for the NRC to approve an NOED request, a number of factors must be adequately demonstrated for the NRC staff to have the necessary confidence that the approval will not involve any net increase in radiological risk and, therefore, not impose any undue risk to the health and safety of the public. In the case of your specific NOED request, we concluded that your request for an NOED could not be granted because, based upon the information that you provided, we could not clearly satisfy ourselves that the requested action involved no safety impact in accordance with the enforcement policy and staff guidance. Your NOED request lacked sufficient information in the areas of apparent root cause, extent of damage and time needed for repairs, extent of condition, and risk assessment, which collectively failed to satisfy the requirements for granting an NOED. These factors are discussed in detail below:

- Absence of Apparent Root Cause Assessment

During the conference call, your staff stated that, due to the extent of damage to the scavenging blower, an aggressive effort to disassemble the blower at the site could adversely impact the determination of the root cause(s) of the failure. As a result, you elected to ship the damaged blower to a vendor facility for disassembly and evaluation in order to best preserve the opportunity to determine the root cause of the failure. Consequently, at the time of the conference call, you indicated that there was not sufficient information available to identify the apparent root cause of the failure.

Addressing the apparent root cause is a specific consideration in the NOED process delineated in NRC Inspection Manual, Part 9900, "Technical Guidance, Operations - Notices of Enforcement Discretion," dated November 2, 2001.

- Uncertainty of the Extent of Damage/Repair Assessment

During the conference call, your staff stated that the anticipated repairs to the EDG could be accomplished within the additional 7 days requested in your NOED.

However, during our discussions of this matter, your staff acknowledged that your planned disassembly and inspection might identify additional and necessary unanticipated repairs which could exceed the time requested for the NOED. You were uncertain of the extent of repairs that would be necessary to restore the EDG to an operable status.

Providing a justification for the duration of the non-compliance with your TSs is a specific consideration in the NOED process delineated in NRC Inspection Manual, Part 9900, "Technical Guidance, Operations - Notices of Enforcement Discretion," dated November 2, 2001.

- Inadequate Extent of Condition Assessment

During the conference call, we also discussed your planned and completed activities relative to a review of the extent of condition for the remaining EDGs, including the difficulty with conducting an adequate extent of condition review in the absence of an apparent root cause for the failure.

Following those discussions, we concluded that there was uncertainty in the lack of an apparent root cause for the blower failure, which could impact your ability to conduct an adequate review of the extent of condition for the failure.

- Inadequate Risk Evaluation Assessment

During the conference call, your staff also discussed their evaluation of the safety significance and the potential consequences of allowing operation of the facility at power beyond the 7 day allowed outage time, including the results of risk calculations. Your staff stated that by avoiding the plant shutdown required by the TSs, the transitional risk associated with a shutdown and startup of the plant would be eliminated and, therefore, the continued operation with the EDG unavailable would be risk-neutral to plant safety. Your transitional risk calculations were based upon industry estimates associated with a potential plant scram during a shutdown evolution.

Your NOED request did not demonstrate adequate risk insights and informed judgments, as specifically required by our NOED process delineated in NRC Inspection Manual, Part 9900, "Technical Guidance, Operations - Notices of Enforcement Discretion," dated November 2, 2001. It is our position that a transitional risk estimate for Fermi, based upon an industry estimate, is not sufficient to assure ourselves that plant specific risks are accounted for.

Your staff also provided some information of a qualitative nature on your risk assessment. If the NOED was to have been approved, a more in-depth discussion would have been necessary in order to assure ourselves that continued operation with the EDG unavailable would be risk-neutral to plant safety.

In summary, on the basis of the staff's evaluation of your request, we have concluded that the issuance of an NOED was not warranted because, with the information provided at the time of your request, we could not clearly satisfy ourselves that the requested action involved no safety impact in accordance with the enforcement policy and staff guidance.

Sincerely,

***/RA/***

Steven A. Reynolds, Acting Director  
Division of Reactor Projects

Docket No. 50-341  
License No. NPF-43

Enclosure: As Stated

cc w/encl: N. Peterson, Manager, Nuclear Licensing  
D. Pettinari, Corporate Legal Department  
Compliance Supervisor  
G. White, Michigan Public Service Commission  
L. Brandon, Michigan Department of Environmental Quality  
Monroe County, Emergency Management Division  
Planning Manager, Emergency Management Division  
MI Department of State Police

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Principal NRC Staff Members on the August 8, 2004, Telephone Call

William Ruland, Director, Project Directorate III, Division of Licensing Project Management (DLPM), Office of Nuclear Reactor Regulation (NRR)

David P. Beaulieu, Project Manager, Section 1, Project Directorate III, DLPM, NRR

Lakshminaras Raghavan, Chief, Section 1, Project Directorate III, DLPM, NRR

Harold Chernoff, Project Manager, Section 1, Project Directorate III, DLPM, NRR

Om Chopra, Senior Electrical Engineer, Electrical and Instrumentation and Controls Branch, NRR

See Ming-Wong, Senior Reactor Analysis, Probabilistic Safety Assessment Branch, NRR

Steven Reynolds, Acting Director, Division of Reactor Projects (DRP), Region III

Eric Duncan, Branch Chief, Reactor Projects Branch 6, DRP, Region III

Robert Lerch, Project Engineer, Branch 6, DRP, Region III

Stephen Campbell, Senior Resident Inspector-Fermi, Branch 6, DRP, Region III

Sonia Burgess, Senior Reactor Analyst, Division of Reactor Safety, Region III