

March 9, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of:) Docket No. 52-033
The Detroit Edison Company)
(Fermi Nuclear Power Plant,)
Unit 3))

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Petition of Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman for Leave to Intervene in Combined Operating License Proceedings and Request for Adjudication Hearing

Introduction

Pursuant to 10 C.F.R. § 2.309, 10 C.F.R. § 52.21 and a notice published by the Nuclear Regulatory Commission ("NRC" or "Commission") at 73 Fed. Reg. 12760 (March 10, 2008), Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman hereby petition and move for leave to intervene and request a hearing in Detroit Edison Company's combined operating license for Fermi, Unit No. 3, proposed to be built near Monroe, Michigan. This petition sets forth with particularity the

contentions sought to be raised. As demonstrated below, Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan and Sierra Club have representational standing, through their members, to make this petition. Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman all bring their petitions as members or as persons who have requested that the aforesaid organizations represent their interests in these proceedings, failing which, they request to be made individual Petitioners.

Description of the Proceeding

This proceeding concerns the application for a combined license ("COL") filed pursuant to 10 CFR Part 52 Subpart C by Detroit Edison Company ("DTE") on September 18, 2008 and supplemented thereafter. The application was accepted for docketing on by the NRC on November 24, 2008. Notice of hearing and opportunity to petition for leave to intervene was published in the Federal Register on January 9, 2009.

Description of Petitioners

Beyond Nuclear is a Maryland-based public education and advocacy group that aims to educate and activate the public on issues pertaining to the hazards of nuclear power, its connection to nuclear weapons and the need to abandon both. Beyond Nuclear advocates for an energy future for the State of Michigan and the United States that is sustainable, benign and democratic. Beyond Nuclear has approximately 8000 members nationally, several of whom live within 50 miles of the Fermi nuclear power plant site. Beyond Nuclear is providing the

declaration of one of its members, Colan Keith Gunter, who lives in proximity to the proposed Fermi Unit 3. BN seeks to intervene to protect the interests of Colan Keith Gunter.

Citizens for Alternatives to Chemical Contamination is a Michigan-based grassroots organization that for over 20 years has educated and organized the public around issues of chemical and radiation safety and protection of the environment. CACC has about 200 members and provides the declaration of one of its members, Harold L. Stokes, who lives in proximity to the proposed Fermi 3.

Citizens Environmental Alliance of Southwestern Ontario is an organization based in the southwestern portion of the province of Ontario, Canada, which has for more than a decade worked on raising citizen awareness of various issues related to preservation of the Great Lakes and favoring the increased deployment of environmentally-benign energy sources. CEA has 50 members and has designated two of them, Derek Coronado and Richard Coronado, as members on behalf of which the organization seeks to intervene. Both live within proximity to the proposed Fermi 3.

The Sierra Club is a national environmental organization dedicated to preservation of the environment on many fronts, from opposing the use of coal-fired electricity generation to preserving and expanding forestlands, to halting stripmining, to organizing and educating the public about the risks and choices between nuclear power and other energy options. The Sierra Club has approximately 17,000 members in Michigan, 4,000 of whom live within 50 miles of the proposed Fermi 3 plant. The Sierra Club seeks to intervene on behalf of two of its members, Edward McArdle and Henry Newnan, both of whom

live within proximity to Fermi 3.

Don't Waste Michigan is a 20-year-old grassroots organization in Michigan which has opposed various incarnations of nuclear energy, from commercial nuclear power plants to radioactive waste. DWM has about 40 members statewide, and several live within 50 miles of the proposed Fermi 3. DWM seeks to intervene on behalf of its member, Michael J. Keegan, who lives within 10 miles of the proposed Fermi 3.

These persons are the individually-named Petitioners:

Colan Keith Gunter
13784 Whitby
Livonia, MI

Edward McArdle
18841 Reed St.
Melvindale, MI 48122

Harold L. Stokes
26345 W. Seven Mile
Redford Township, MI

Derek Coronado
808 Hall Ave.
Windsor, ON N9A 2M3

Richard Coronado
808 Hall Ave.
Windsor, ON N9A 2M3

Henry Newnan
27156 Gail Drive
Warren, MI 48093-7538

Michael J. Keegan
811 Harrison St.
Monroe, MI 48161

Sandra Bihn
6565 Bayshore Rd.
Oregon, OH 43616

George Steinman
3011 Vivian
Monroe, MI 48161

Marilyn R. Timmer

507 St. Mary's Ave.
Monroe, MI 48161

Leonard Mandeville
1280 S. Raisinville
Monroe, MI 48161

Frank Mantei
571 St. Mary's Ave.
Monroe, MI 48161

Marcee Meyers
1280 S. Raisinville
Monroe, MI 48161

Shirley Steinman
3011 Vivian Rd.
Monroe, MI 48161

The aforementioned individuals live within the proximity of proposed Fermi 3. Keegan, Bihn, the Steinmans, Mandeville, Mantei, Timmer and Meyers have designated BN, CACC, DWM, the Sierra Club and CEA to represent them as intervenors.¹

Standing

Pursuant to 10 CFR § 2.309, a request for hearing or petition for leave to intervene must address 1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, 2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and 3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. See *Metropolitan Edison Co. (Three Mile Island Nuclear station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983)

¹Michael Keegan does so in addition to his representative Petitioner status with Don't Waste Michigan.

(citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. See *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. See *Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998). *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002). Standing to participate in this proceeding is demonstrated by the declarations of the organizations and individuals provided with this Petition. All of the individual Petitioners live within 50 miles of the proposed Fermi 3 site who have authorized some or all of the

organizational Petitioners to represent their interests in this proceeding.

Because they live near the proposed site, *i.e.*, within 50 miles, the individually-named Petitioners have presumptive standing by virtue of their proximity to the new nuclear plant that may be constructed on the site. *Diablo Canyon, supra*, 56 NRC at 426-427, citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001). In *Diablo Canyon*, the Licensing Board noted that petitioners who live within 50 miles of a proposed nuclear power plant are presumed to have standing in reactor construction permit and operating license cases, because there is an "obvious potential for offsite consequences" within that distance. *Id.* Here, DTE seeks a construction and operating license, a COL, for a third nuclear reactor, Unit 3, near Monroe, Michigan. Thus, the same standing concepts apply.

The Petitioners' members seek to protect their lives and health by opposing the issuance of a COL to DTE. Petitioners seek to ensure that no COL is issued by the U.S. Nuclear Regulatory Commission unless DTE demonstrates full compliance with the Atomic Energy Act and NEPA.

Further, *locus standi* is based on three requirements: injury, causation and redressability. Petitioners hereby request to be made a party to the proceeding because (1) construction and operation of a nuclear reactor at Fermi 3 would present a tangible and particular harm to the health and well-being of members living within 50 miles of the site, (2) the NRC has initiated proceedings for a combined license, the granting of which would directly affect the named members and other individuals, and (3) the Commission is the sole agency with

the power to approve, to deny or to modify a license to construct and operate a commercial nuclear power plant.

Contentions

A combined license is authorization from the NRC to construct and operate a nuclear power plant at a specific site. Before issuing a COL, the NRC staff must complete safety and environmental reviews of the application. The COL must comply with provisions of the Atomic Energy Act, the National Environmental Policy Act, NRC regulations and all applicable laws.

Petitioners present their sundry contentions as attachments to this Petition. They incorporate the same fully by reference into this Petition as though rewritten, and pray the Commission admit them for full and further adjudication.

/s/ Terry J. Lodge
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2009 I electronically filed the foregoing "Petition" with the electronic filing system of the U.S. Nuclear Regulatory Commission and that persons and parties of record were electronically served.

/s/ Terry J. Lodge
Terry J. Lodge, Esq.
Counsel for Petitioners