

November 16, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
THE DETROIT EDISON COMPANY) Docket No. 52-033-COL
)
(Fermi Nuclear Power Plant, Unit 3))

APPLICANT’S MOTION FOR
SUMMARY DISPOSITION OF CONTENTION 8

INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205, the Detroit Edison Company (“Applicant”) files this motion for summary disposition of Contention 8.¹ Contention 8 relates to the discussion in the Applicant’s Environmental Report (“ER”) regarding the Eastern Fox snake. Summary disposition is warranted on the grounds that the discrepancies and omissions averred in the contention have been cured, and there exists no genuine issue as to any material fact relevant to the contention. Therefore, under the applicable NRC regulations, Detroit Edison is entitled to a decision as a matter of law. This motion is supported by a Statement of Material Facts as to which Detroit Edison asserts that there is no genuine dispute and the affidavit of Peter W. Smith, Director, Nuclear Development – Licensing and Engineering, for the Detroit Edison Company.

LEGAL STANDARDS FOR SUMMARY DISPOSITION

In a prior summary disposition motion, Detroit Edison set forth the relevant law regarding the standard for summary disposition and does not repeat that discussion herein. *See*

¹ Counsel for Detroit Edison has contacted counsel for the NRC Staff and Joint Intervenor. Counsel for the NRC Staff does not oppose the motion. The Joint Intervenor indicated that they oppose the motion.

“Applicant’s Motion For Summary Disposition of Contention 3,” dated April 26, 2010, at 1-4. The relevant legal standards are also recited in the Licensing Board’s decision on that motion. *See* Order (Granting Motion for Summary Disposition of Contention 3), dated July 9, 2010, at 5-6.

SCOPE OF ADMITTED CONTENTION 8

Contention 8, as proposed,² alleged that “inadequate mitigation has been considered” relative to threatened and endangered species. Pet. at 89. The primary focus of the proposed contention was the Eastern Fox snake, which is listed as a threatened species by the Michigan Department of Natural Resources and Environment (“MDNRE”).³ Relying solely on a letter from Lori Sargent, a wildlife biologist for the Michigan Department of Natural Resources (now MDNRE),⁴ the Intervenor highlighted discrepancies between recorded sightings of the Eastern Fox snake at the Fermi property by State biologists and statements in the ER that the snake has not been observed on the property. The Intervenor also asserted that “alternatives have not been given the requisite ‘hard look’ and as a result several species are threatened and

² See “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,” at 89 (Mar. 9, 2009) (“Pet.”).

³ The Eastern Fox snake is not listed as a threatened or endangered species under the Federal Endangered Species Act. See U.S. Fish & Wildlife Service, *Species Reports* (available at http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp) (last accessed on September 22, 2010).

⁴ The Michigan Department of Natural Resources (“MDNR”) and the Michigan Department of Environmental Quality (“MDEQ”) have been combined into the MDNRE.

endangered.” *Id.* The Intervenor also argued that, if the project goes forward, “mitigative measures must be taken.” *Id.*

As the Board explained in its decision admitting a portion of Contention 8, Contention 8 is a contention under the National Environmental Policy Act (“NEPA”) alleging that the ER fails to adequately assess the project’s impacts on the Eastern Fox snake. LBP-09-16 at 62. The threshold factual question presented by Contention 8 revolves around discrepancies between information presented in the ER regarding the presence of Eastern Fox snakes at the site and information regarding observations by MDNR (now MDNRE) personnel. The Licensing Board thus explained that the “primary factual dispute is whether a population of eastern fox snake is present at the site of the proposed project, as MDNR and the [Intervenors] maintain, or whether the Applicant is correct in stating in its ER on page 4-45 of the ER (in contradiction to page 2-333 of the same document) that no such population has been observed.” *Id.* at 66.

Assuming that a viable snake population is present at the site, the Licensing Board then considered the portion of Contention 8 that relates to mitigation of impacts to that snake population. As the Board noted, MDNR (now MDNRE) contends that construction could harm any snakes present at the site. The State biologist therefore recommended that Detroit Edison develop a “plan for protection of this rare species with regard to this new reactor project.” Pet. at 90 (citing a letter from Lori Sargent, MDNR, to G. Hatchett, NRC, dated February 9, 2009 (ADAMS Accession No. ML090401014)). Against this call for a mitigation plan by MDNR, the Board noted that the ER maintains that no mitigation measures are needed. Thus, the Board admitted the portion of Contention 8 alleging that the ER fails to propose mitigation measures related to the fox snake. This part of Contention 8 is a contention of omission relating to the lack of a discussion of mitigation measures in the ER.

The Licensing Board found that Contention 8 was inadmissible to the extent that it could be construed as challenging the discussion of impacts to any other species. LBP-09-16 at 62. The Licensing Board also refused to admit Contention 8 to the extent that it asks that the Licensing Board order Detroit Edison to adopt additional mitigation measures. *Id.* As the Licensing Board explained, NEPA is a procedural statute that requires disclosure and analysis of environmental impacts, but does not mandate substantive obligations for the protection of natural resources. *Id.*

At bottom, the admitted Contention 8 relates to (1) the discrepancy in the ER regarding the presence of Eastern Fox snakes at the Fermi Unit 3 site; and (2) the failure of the ER to discuss mitigation measures related to the Eastern Fox snake.

THE APPLICANT IS ENTITLED TO
SUMMARY DISPOSITION ON CONTENTION 8

Detroit Edison moves for summary disposition of Contention 8 on the ground that there no longer exists a genuine dispute concerning any facts material to the foregoing matters. Detroit Edison has resolved the discrepancy in the ER regarding the presence of the Eastern Fox snake at the Fermi site, developed a mitigation plan for the snake, and submitted an addenda to the ER describing those plans. These efforts render both aspects of the contention moot. The Commission has explained that a contention is moot where revised information supplied by an applicant eliminates the controversy, factual or otherwise, that was the basis for admitting a contention. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-99-23, 49 NRC 485, 493 (1999). A contention is also moot where a contention alleges the omission of particular information, and the information is later supplied by the applicant. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear State, Units 1 and 2), CLI-02-

28, 56 NRC 373, 282-283 (2002); *see also* *USEC, Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433 (2006).

Since the contention was admitted, Detroit Edison addressed the two issues underlying Contention 8 in a letter to the NRC, dated February 15, 2010. *See* Letter to NRC Document Control Desk from Peter W. Smith, Director, Nuclear Development – Licensing and Engineering, Detroit Edison Company, NRC3-10-0005, “Detroit Edison Company Response to NRC Requests for Additional Information Letter No. 2 Related to the Environmental Review,” at Attachment 7 (ADAMS Accession No. ML100541329). Detroit Edison provided updated information regarding the location of Eastern Fox snake sightings, revised the application to reduce the impacts of Fermi Unit 3 construction on snake habitat, and developed a site-specific mitigation plan to reduce impacts to Eastern Fox snakes. Therefore, the conflicting data identified in Contention 8 has been resolved and the allegedly missing information has been supplied. Contention 8 is therefore moot. Summary disposition is appropriate for a contention that is moot. *Exelon Generation Company* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 182 (2005).

A. Detroit Edison Confirmed Presence of Fox Snakes

As noted by MDNR (now MDNRE) and incorporated by the Intervenors into Contention 8, the original ER contained a discrepancy regarding the presence of Eastern Fox snakes at the Fermi site. Section 2.4.1.2.2.1 stated that the snakes were “sighted two times on the Fermi property in June 2008.” In contrast Section 4.3.1.2.1 stated that the fox snake “has not been observed on the Fermi property,” though it noted that “the potential for its occurrence on the property does exist.” As described below, Detroit Edison has provided additional information on the location of Eastern Fox snake sightings that resolves this discrepancy in the ER.

In Attachment 7 to NRC3-10-0005, Detroit Edison provided a response to NRC Request for Additional Information (“RAI”) TE 2.4.1-12.⁵ “Supplementary Requests for Additional Information (RAIs) for the Fermi 3 Combined License Application Environmental Review,” dated November 6, 2009 (ADAMS Accession No. ML093060299). Specifically, Detroit Edison provided a map showing the locations where observations of Eastern Fox snakes were made by Detroit Edison employees during the period from 1990 to 2007. NRC3-10-0005, Attachment 7, at 3; *id.*, Enclosure 1. Multiple sightings were made at each location during that period. *Id.* Between one and six snakes were observed per sighting. *Id.* In addition, the map shows two sightings made by Ducks Unlimited personnel during the site wetland survey in 2008. *Id.*

The revised information regarding the presence of Eastern Fox snakes resolves the “primary factual dispute” identified by the Licensing Board in admitting Contention 8 for hearing: the Eastern Fox snake is present at the Fermi site. LBP-09-16 at 66. Accordingly, to the extent that Contention 8 was based on the inconsistency in the ER regarding the presence of the snakes at the Fermi site, Detroit Edison has resolved that discrepancy. This aspect of Contention 8 is therefore moot.

⁵ RAI TE 2.4.1-12 requested the following from Detroit Edison:

Provide up-to-date and complete data on the locations and dates of sightings of the eastern fox snake (*Pantherophis gloydi*) on the proposed Fermi 3 site, including any sightings by Detroit Edison staff or others in the last 10 years.

Information about the numbers and locations of sightings of the eastern fox snake in recent years would facilitate evaluation of the nature of this snake’s population on the project site. In a phone conversation with Ecology and Environment, the Michigan Department of Natural Resources (MDNR) indicated that its records of a viable population of eastern fox snakes on the Fermi property come at least in part from reports by Detroit Edison personnel.

B. Detroit Edison Has Identified Mitigation Measures to Reduce Impacts to Fox Snake

As noted above, the Licensing Board admitted the portion of Contention 8 that alleged a failure to discuss measures to mitigate potential impacts to the fox snake. This omission has also been cured by Detroit Edison.

In NRC3-10-0005, Detroit Edison responded to RAIs TE 2.4.1-13,⁶ TE 4.3.1-8,⁷ and TE 4.3.1-9.⁸ Detroit Edison explained that “eastern fox snakes have been observed in numerous locations including those that are developed and currently in use for Fermi 2 operations.” NRC3-10-0005, Attachment 7, at 3. Although the Eastern Fox snake habitat is primarily associated with wetlands, due to the observed wide distribution at the Fermi site all undeveloped areas are considered to provide habitat for the species. *Id.* As a result, Detroit Edison concluded that construction of Fermi Unit 3 will impact a portion of the fox snake habitat at the site.

Subsequent to its initial application, Detroit Edison re-evaluated the proposed site layout and, based on that review, made changes to its application. In particular, Detroit Edison revised the site layout to reduce potential wetland impacts, which, as noted above, results in a reduction of impact to primary Eastern Fox snake habitat. *See* NRC3-09-0017, Attachment 2, at

⁶ RAI TE 2.4.1-13 requested the following from Detroit Edison:

Provide a delineation of potential eastern fox snake habitat within the proposed Fermi 3 site.

⁷ RAI TE 4.3.1-8 requested the following from Detroit Edison:

Provide an assessment of the potential impacts of the proposed Fermi 3 project on eastern fox snakes and potential eastern fox snake habitat.

⁸ RAI TE 4.3.1-9 requested the following from Detroit Edison:

Provide a discussion of measures Detroit Edison is considering to mitigate potential impacts to the eastern fox snake and its habitat.

Figure 2.1-4 (responding to RAI GE3.1-1) (ADAMS Accession No. ML093650120). The revised site layout reduced wetland impacts by approximately 120 acres. *See id.*, at ER mark-up Section 4.3.1.2.2 (page 4-46) (reducing wetland impacts from 169 acres to approximately 49 acres). Of this acreage, approximately 39 acres (80 percent) are temporary impacts that would be restored following construction. *Id.* The changes to the site layout reduced impacts to undeveloped areas overall — including both wetland areas and non-wetland areas, which are assumed to be suitable fox snake habitat — by 117 acres (relative to the original proposed site layout). NRC3-10-0005, Attachment 7, at 4. For those undeveloped areas that would be impacted by construction, approximately 95 acres of impacts will be temporary in nature, and the areas will be restored to a condition of equivalent or better ecological value once construction is complete. *Id.*

In order to further reduce the potential impacts to Eastern Fox snakes, Detroit Edison also developed a draft *Habitat and Species Conservation Plan: Eastern Fox Snake (Elaphe gloydi)*. NRC3-10-0005, Attachment 7, at Enclosure 2. The plan describes measures to enhance employee awareness of the snakes and to reduce impacts to the snakes and their habitat from Fermi 3 construction activities. Specific measures to minimize impacts to fox snakes identified by the plan include:

- Employee Education Program. Training documents for construction workers will describe the Eastern Fox snake and its habitat in order to bring attention to the species' threatened status. Training will include pictures and contact information for reporting fox snake sightings. Every construction employee will be required to review the training materials and acknowledge receipt and understanding of the materials prior to beginning work at the site.
- Pre-job Briefings. In order to reinforce training prior to initiating work, the daily pre-job briefing checklist for activities with the potential to impact Eastern Fox snakes will remind employees of their obligations regarding the snake.

- Preconstruction Survey (Developed Areas). Prior to beginning daily work on a developed or already disturbed area, designated employees will walk down the site and look for eastern fox snakes. Any fox snakes found in these areas will be removed by a designated Detroit Edison employee who will then relocate the snakes to undeveloped areas of the site that will not be impacted by Fermi 3 construction.
- Preconstruction Survey (Undeveloped Areas). One week and again one day prior to clearing undeveloped areas,⁹ the areas will be walked through by a team led by a biologist familiar with Eastern Fox snakes and their habitat. During this walkthrough, any fox snakes observed will be captured and relocated to an undeveloped location on site that will not be impacted by Fermi 3 construction activities. The lead biologist will ensure that the snakes are not harmed while being captured, transported, or released. Potential hiding places for the snakes will be uncovered and searched. Construction workers will continue to look for snakes as clearing progresses. If a construction worker observes a fox snake during work activities, construction will stop until the snake clears the area or until designated personnel can clear the snake from the area.
- Construction Mitigation. Employees will halt construction upon discovery of an Eastern Fox snake. Any snakes observed in developed areas during construction will be captured and released to areas that will not be impacted during Fermi 3 construction.
- Monitoring and Reporting. Detroit Edison will maintain a log documenting when and where monitoring is performed. In cases where an Eastern Fox snake is observed during a walkthrough, a report will note the number of snakes located and removed as well as the release location. Detroit Edison will also prepare an annual report summarizing mitigation efforts. Any snakes inadvertently killed in the construction process will be reported to the MDNRE as required by applicable take permits.

The mitigation plan will be finalized after consultation with MDNRE during the state's incidental take permit process and will be implemented prior to construction. Detroit

⁹ Land clearing activities will be scheduled to be performed outside of the Eastern Fox snake hibernation periods so that they are active and therefore easier to locate and safely remove from the area.

Edison need not finalize the mitigation plan now in order to comply with NEPA. In *Robertson v. Methow Valley Citizens Council*, the Supreme Court unequivocally held that:

[I]t would be inconsistent with NEPA’s reliance on procedural mechanisms — as opposed to substantive, result-based standards — to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act.

490 U.S. 332, 353 (1989). The Court stated that “NEPA imposes *no substantive requirement* that mitigation measures actually be taken.” *Id.* at n.16 (emphasis added). The courts have applied *Methow Valley* repeatedly in ruling that NEPA requires a “reasonably complete discussion” — but not implementation — of “possible mitigation measures.” *Id.* at 352; *see, e.g., Laguna Greenbelt, Inc. v. U.S. Dep’t of Transp.*, 42 F.3d 517, 528 (9th Cir. 1994) (“NEPA does not require a fully developed plan that will mitigate all environmental harm before an agency can act; NEPA requires only that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fully evaluated.” (citations omitted)); *Nat’l Parks & Conservation Ass’n v. U.S. Dep’t of Trans.*, 222 F.3d 677, 681 n.4 (9th Cir. 2000) (“Contrary to National Parks’ assertion, a mitigation plan need not be legally enforceable, funded or even in final form to comply with NEPA’s procedural requirements.”); *Cnty. of Rockland v. FAA*, 335 Fed.Appx. 52 (D.C. Cir. 2009) (“NEPA does not impose a ‘substantive requirement that a complete mitigation plan be actually formulated and adopted’ before agency can act”) (quoting *Methow Valley*, 490 U.S. at 352); *Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992) (relying on *Methow Valley* in holding that identification and discussion of various potential measures to mitigate the environmental impact is adequate under NEPA). By providing a discussion of mitigation measures, Detroit Edison has eliminated the omission from the ER highlighted by the Board and the Joint Intervenors. There remain no additional issues to litigate. If the Joint Intervenors have a specific challenge to the mitigation plan described in the

information submitted to the NRC, they must file a new or amended contention stating the challenge and the basis.¹⁰

At bottom, Detroit Edison revised the COL application to resolve the inconsistency regarding the presence of fox snakes at the Fermi 3 site. Detroit Edison also revised the site layout to reduce potential wetland impacts, which would result in a reduction of impact to primary eastern fox snake habitat, and developed a fox snake mitigation plan. Contention 8, as admitted by the Licensing Board, is now moot. There remains no genuine issue as to any material fact relevant to the admitted contention. Accordingly, Detroit Edison is entitled to a decision as a matter of law.

CONCLUSION

For the above reasons, the Licensing Board should grant summary disposition of Contention 8.

Respectfully submitted,

/s/ signed electronically by
David A. Repka
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1700 K Street, NW
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¹⁰ The Intervenors have not to date elected to revise or amend Contention 8 based on the new information provided in Detroit Edison's February 15, 2010 letters to the NRC. The Licensing Board's scheduling order, dated September 11, 2009, specifically stated that new or amended contentions must be submitted "in a timely fashion based on the availability of the [new] information." Order at 2. The Licensing Board also explained that "[i]n general, a proposed new or amended contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available." *Id.*

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COUNSEL FOR THE
DETROIT EDISON COMPANY

Dated at Washington, District of Columbia
this 16th day of November 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
THE DETROIT EDISON COMPANY)	Docket No. 52-033-COL
)	
(Fermi Nuclear Power Plant, Unit 3))	

STATEMENT OF MATERIAL FACTS
ON WHICH NO GENUINE DISPUTE EXISTS

The Detroit Edison Company submits, in support of its motion for summary disposition of Contention 8, this statement of material facts as to which Detroit Edison contends that there is no genuine issue to be heard.

1. The Detroit Edison Company filed the combined license (“COL”) application for Fermi Unit 3 on September 18, 2008. The application included an Environmental Report (“ER”) and a Final Safety Analysis Report (“FSAR”).
2. On March 9, 2009, 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 (collectively “Intervenors”) filed their “Petition for Leave to Intervene in Combined Operating License Proceedings and Request for Adjudication Hearing” (“Petition”).
3. In its Memorandum and Order dated July 31, 2009, the Licensing Board admitted a portion of Contention 8. LBP-09-16, 70 NRC __, slip op. at 25. The Board admitted the portion of Contention 8 that alleged the ER fails to adequately assess the project’s impacts on the Eastern Fox snake. LBP-09-16 at 62. According to the Board, the threshold question presented by Contention 8 revolves around discrepancies between information presented in the ER regarding the presence of the snakes at the site and information regarding observations of Eastern Fox snakes by State biologists. The Board also highlighted the lack of a discussion in the ER of measures to mitigate impacts to the fox snake population at the site. *Id.*
4. In a letter dated February 15, 2010, the Detroit Edison Company responded to several NRC Staff requests for additional information (“RAIs”) regarding the Eastern Fox snake. Letter to NRC Document Control Desk from Peter W. Smith, Director, Nuclear

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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THE DETROIT EDISON COMPANY) Docket No. 52-033-COL
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AFFIDAVIT OF PETER W. SMITH IN
SUPPORT OF SUMMARY DISPOSITION OF CONTENTION 8

I, Peter W. Smith, do hereby state as follows:

1. I am the Director, Nuclear Development – Licensing and Engineering, for the Detroit Edison Company. In my current position I have overall responsibility for the combined license (“COL”) application for Fermi Unit 3.

2. In a letter dated February 15, 2010, I provided, on behalf of the Detroit Edison Company, a response to several NRC Staff Requests for Additional Information (“RAIs”) regarding the existence of the Eastern Fox snake at the Fermi 3 site and possible mitigation measures. Letter to NRC Document Control Desk from Peter W. Smith, Director, Nuclear Development – Licensing and Engineering, Detroit Edison Company, NRC3-10-0005, “Detroit Edison Company Response to NRC Requests for Additional Information Letter No. 2 Related to the Environmental Review” (ADAMS Accession No. ML100541329).

3. In NRC3-10-0005, Detroit Edison provided updated information regarding the location of fox snake sightings, revised the application to describe changes in the proposed Fermi Unit 3 layout and construction plan that reduce the impacts of construction on fox snake habitat, and developed a site-specific mitigation plan to reduce impacts to the snakes.

4. Regarding the presence of Eastern Fox snake, Detroit Edison provided a map showing the locations where observations of fox snakes were made by Detroit Edison employees during the period from 1990 to 2007. NRC3-10-0005, Attachment 7, at 3; *id.*, Enclosure 1. Multiple sightings were made at each location during that period. *Id.* Between one and six snakes were observed per sighting. *Id.* In addition, the map shows two sightings made by Ducks Unlimited personnel during the site wetland survey in 2008. *Id.*

5. Subsequent to its initial application, Detroit Edison re-evaluated the proposed site layout and, based on that review, made changes to its application. In particular, Detroit Edison revised the site layout to reduce potential wetland impacts, which results in a reduction of impact to primary Eastern Fox snake habitat. *See* NRC3-09-0017, Attachment 2, at Figure 2.1-4 (responding to RAI GE3.1-1) (ADAMS Accession No. ML093650120). The revised site layout reduced wetland impacts by approximately 120 acres. *See id.*, at ER mark-up Section 4.3.1.2.2 (page 4-46) (reducing wetland impacts from 169 acres to approximately 49 acres). Of this acreage, approximately 39 acres (80 percent) are temporary impacts that would be restored following construction. *Id.* The changes to the site layout described in NRC3-09-0017 reduced impacts to undeveloped areas overall — including both wetland areas and non-wetland areas, which are assumed to be suitable fox snake habitat — by 117 acres (relative to the original proposed site layout). NRC3-10-0005, Attachment 7, at 4. For those undeveloped areas that would be impacted by construction, approximately 95 acres of impacts will be temporary in nature, and the areas will be restored to a condition of equivalent or better ecological value once construction is complete. *Id.* These changes were reflected in revisions to the Fermi Unit 3 Environmental Report (“ER”).

6. In order to further reduce the potential impacts to fox snakes, Detroit Edison also developed a draft *Habitat and Species Conservation Plan: Eastern Fox Snake (Elaphe gloydi)*. NRC3-10-0005, Attachment 7, at Enclosure 2. The plan describes measures to enhance employee awareness of the Eastern Fox snake and to reduce impacts to fox snakes and their habitat from Fermi 3 construction activities.

7. I hereby certify under penalty of perjury that the foregoing is true and complete to the best of my knowledge, information, and belief.

Executed in accord with 10 C.F.R. § 2.304(d),

/s/ Peter W. Smith
Peter W. Smith
The Detroit Edison Company
One Energy Plaza
Detroit, MI 48226

Dated at Detroit, Michigan
this 16th of November 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
THE DETROIT EDISON COMPANY) Docket No. 52-033-COL
(Fermi Nuclear Power Plant, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S MOTION FOR SUMMARY DISPOSITION OF CONTENTION 8,” “STATEMENT OF MATERIAL FACTS IN SUPPORT OF SUMMARY DISPOSITION,” and “AFFIDAVIT OF PETER W. SMITH” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 16th day of November 2010, which to the best of my knowledge resulted in transmittal of the foregoing to the following persons.

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