

November 7, 2011

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 REPLY TO MOTION FOR LEAVE TO SUPPLEMENT BASIS

On October 28, 2011, the Intervenors filed a Motion¹ seeking to supplement the basis for their proposed contention filed on August 12, 2011, related to environmental implications of the Fukushima accident. The proffered supplement is the Commission’s Staff Requirements Memorandum (“SRM”), SRM/SECY-11-0124,² addressing the recommendations of the NRC’s Near-Term Task Force Report on the Fukushima accident. The Detroit Edison Company (“Detroit Edison”) does not object to the Motion to supplement the basis for the proposed contention. However, Detroit Edison continues to oppose admissibility of the proposed contention. The SRM does not establish an admissible contention under the National Environmental Policy Act (“NEPA”).

¹ See “Motion for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report,” dated October 28, 2011 (“Motion”). The Motion was filed by Beyond Nuclear, 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, who are currently intervenors in this combined license (“COL”) proceeding (collectively, “Intervenors”).

² SRM/SECY-11-0124, “Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report,” dated October 18, 2011.

As discussed in Detroit Edison's Response to the proposed contention,³ the Intervenor has not established a genuine dispute with the Fermi 3 Environmental Report. Neither the proposed contention nor the Declaration of Dr. Makhijani included with the contention drew any connection between the NRC's Near-Term Task Force Report and any specific significant new environmental information germane to Fermi 3. Response, at 11-19. In particular, the proposed contention drew no specific connection between the Task Force recommendations and the risks of an accident at Fermi 3 or the Fermi 3 COL evaluation of Severe Accident Mitigation Alternatives ("SAMAs").

The Commission itself has determined that any argument that there is an obligation to supplement the environmental record under NEPA based on the Fukushima events is presently premature. *See* CLI-11-05, slip op. 30-31 (September 9, 2011) (holding that requests for a NEPA supplement based on the Fukushima event are "premature" and that "any generic NEPA duty — if one were appropriate at all — does not accrue now"). That decision was issued by the Commission with full awareness of the Near-Term Task Force Report and recommendations. The fact that the Commission has now issued an SRM to the NRC Staff on the recommendations of the Near-Term Task Force Report does not alter the conclusion that a NEPA contention is premature. The SRM does not provide any new information about environmental consequences of the events in Japan, and does not provide any new or significant environmental information germane to Fermi 3.

The Intervenor suggests that the SRM "undermines the basis for a recent licensing board decision finding that contentions similar to SLOMFP's contention were premature" Motion, at 2, citing, *PPL Bell Bend, L.L.C.* (Bell Bend Nuclear Power Plant); *Luminant*

³ "Applicant's Response to Proposed Contention," dated September 6, 2011 ("Response").

Generation Co., L.L.C. (Comanche Peak Nuclear Power Plant, Units 3 and 4); *Energy Northwest* (Columbia Generating Station); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plants, Units 3 and 4); *Duke Energy Carolinas, L.L.C.* (William States Lee Nuclear Station, Units 1 and 2), LBP-11-27, ___ NRC ___, slip op. at 16 (Oct. 18, 2011). However, this conclusion is not explained in the Motion. In fact, the SRM directs the Staff to move forward with respect to the Task Force recommendations. But the SRM does not address environmental issues and takes no position on any NEPA issue. The rationale of the licensing board in LBP-11-27 remains sound and would apply equally to the proposed contention in this matter.⁴

Respectfully submitted,

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Dated at Washington, District of Columbia
this 7th day of November 2011

⁴ Subsequent to LBP-11-27, in LBP-11-28, dated October 19, 2011, the Licensing Board in the Seabrook license renewal proceeding also rejected a proposed contention involving the Task Force recommendations. The Seabrook Board concluded that the proposed contention was “plainly not admissible.” *Id.*, slip op. at 4. Significantly, the Intervenor here have incorporated the Seabrook contention by reference in its entirety. *See* Response at 10-11. The rationale in the Seabrook case therefore is directly applicable to the proposed contention in this proceeding on the Fermi 3 COL.

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CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S REPLY TO MOTION FOR LEAVE TO SUPPLEMENT BASIS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 7th day of November 2011, which to the best of my knowledge resulted in transmittal of the foregoing to the following persons.

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