

May 7, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO APPLICANT'S MOTION
FOR SUMMARY DISPOSITION OF CONTENTION 15

Pursuant to 10 C.F.R. § 2.1205(b), the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the motion filed April 17, 2012, by the Detroit Edison Company (DTE or Applicant), requesting summary disposition of Contention 15. The NRC Staff agrees that all issues related to Contention 15 have been resolved, and that the Applicant is entitled to summary disposition on this contention because there remains no genuine issue of material fact.

BACKGROUND

By letter dated September 18, 2008, the Applicant submitted a combined license (COL) application (Application or COLA) for one ESBWR advanced boiling water reactor to be located at the site of the operating Fermi Nuclear Power Plant, Unit 2 in Monroe County, Michigan. Letter from Jack M. Davis, DTE, to NRC, Detroit Edison Company Submittal of a Combined License Application for Fermi 3 (NRC Project No. 757) (Sept. 18, 2008), ADAMS Accession No. ML082730763. The ESBWR design is the subject of an NRC rulemaking under Docket No. 52-010.

On March 9, 2009, the Intervenors filed a Petition for Leave to Intervene in the COLA proceeding, along with a separate document containing 14 contentions. Following oral argument, the Licensing Board found that the Intervenors had standing in this proceeding and had filed four contentions that were admissible in part. *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-09-16, 70 NRC 227 (2009). On November 6, 2009, the Intervenors filed a Supplemental Petition for Admission of a Newly Discovered Contention (Supplemental Petition), which included a quality assurance (QA) contention numbered as Contention 15. As originally submitted, Contention 15 stated that

[DTE] has failed to comply with Appendix B to 10 C.F.R. Part 50 to establish and maintain a quality assurance program since March 2007 when it entered into a contract with [B&V] for the conduct of safety-related [COL] application activities and to retain overall control of safety-related activities performed by B&V. DTE further has failed to complete any internal audits of QA programmatic areas implemented for Fermi 3 COLA activities performed to date. And DTE has also failed to demonstrate trending of corrective actions to identify recurring conditions adverse to quality since the beginning of the Fermi 3 project in March 2007.

Supplemental Petition at 2-3. The Applicant and Staff filed answers to this contention on December 1, 2009, and the Intervenors filed their reply on December 8, 2009 (Intervenors' Reply).

Following all briefing, the Board admitted a reformulated version of Contention 15 that reads as follows:

Detroit Edison (DTE) failed to comply with Appendix B to 10 C.F.R. Part 50 to establish and implement its own quality assurance (QA) program when it entered into a contract with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) application activities and to retain overall control of safety-related activities performed by B&V. This violation began in March 2007 and continued through at least February 2008. Further, DTE failed to complete internal audits of QA programmatic areas implemented for the Fermi 3 COL Application, and DTE also has failed to document trending of corrective actions to identify recurring conditions adverse to quality since the beginning of the Fermi Unit 3 project in March 2007.

Contention 15A: These deficiencies adversely impact the quality of the safety-related design information in the FSAR that is based on B&V's tests, investigations, or other safety-related activities. Because the NRC may base its licensing decision on safety-related design information in the FSAR only if it has reasonable assurance of the quality of that information, it may not lawfully issue

the COL until the deficiencies have been adequately corrected by the Applicant, or until the Applicant demonstrates that the deficiencies do not affect the quality of safety-related design information in the FSAR.

Contention 15B: Although DTE claims that in February 2008 it adopted a QA program that conforms to Appendix B, DTE has failed to implement that program in the manner required to properly oversee the safety-related design activities of B&V. This demonstrates an ongoing lack of commitment on the part of DTE's management to compliance with NRC QA regulations. The NRC cannot support a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety until DTE provides satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC regulations.

Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP-10-9, 71 NRC 493, 510-11 (2010). On April 17, 2012, the Applicant filed a motion for summary disposition of Contention 15. Applicant's Motion for Summary Disposition of Contention 15 (Apr. 17, 2012) (Motion).

As described below, all issues related to Contention 15 have now been resolved, and the Staff agrees that the Applicant is entitled to summary disposition of the contention as a matter of law. The Staff's completed review of QA issues related to the Fermi 3 COL application is documented in Chapter 17 of the Advanced Safety Evaluation Report (SER) With No Open Items, ADAMS Accession No. ML112630120, attached hereto as Staff Exhibit 1. This SER chapter was presented to the Advisory Committee on Reactor Safeguards (ACRS) on November 30, 2011, see Declaration of Adrian Muñiz ¶ 6 (Muñiz Decl.), and no changes are anticipated prior to publication of the Final SER for the Fermi 3 COL application. This pleading is accompanied by affidavits prepared by individual NRC Staff members Adrian Muñiz, Aida Rivera-Varona, Mark Tonacci, and George Lipscomb, and by eleven exhibits documenting the resolution of specific issues related to Contention 15. This information supports the Staff's position that there are no unresolved issues remaining, and that summary disposition of Contention 15 is warranted at this time.

DISCUSSION

I. LEGAL STANDARDS

The standards for summary disposition under 10 C.F.R. § 2.1205 are the same as those under 10 C.F.R. § 2.710(d)(2). 10 C.F.R. § 2.1205(c) (“In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part”). A party is entitled to summary disposition as to all or any part of the matters involved in the proceeding “if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” 10 C.F.R. § 2.710(d)(2). “The standards are based upon those the federal courts apply to motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.” *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 297 (2010) (citing *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993)).

The movant bears the initial burden of showing that there is no genuine issue as to any material fact, which it attempts to do by means of a required statement of material facts not at issue and any supporting materials that accompany its dispositive motion. *See Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993). If the opposing party fails to counter each adequately supported material fact with its own statement of material facts in dispute and supporting materials, the movant's facts will be deemed admitted. *Id.* “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48 (1986) (emphasis in original); *see also* 10 C.F.R. § 2.710(b) (“[A] party opposing the motion may not rest upon the mere allegations or denials of his answer,” but

rather, “must set forth specific facts showing that there is a genuine issue of fact.”). “Only disputes over facts that might affect the outcome of a proceeding would preclude summary disposition.” *Pilgrim*, CLI-10-11, 71 NRC at 297 (quoting *Liberty Lobby*, 477 U.S. at 248).

In addition, the Commission will reject attempts to add new arguments in an answer to a summary disposition motion that could have been raised earlier. See *Pilgrim*, CLI-10-11, 71 NRC at 310-11. Such arguments include those not fairly encompassed by the contention at issue in the motion for summary disposition, as originally pled and admitted, when the intervenor does not attempt to amend the contention to add the new arguments. *Id.*

II. ALL ISSUES RELATED TO CONTENTION 15 HAVE BEEN RESOLVED, AND THERE IS NO GENUINE ISSUE OF MATERIAL FACT REMAINING

Contention 15, as admitted by the Board, consists of three parts. An unnumbered introductory paragraph makes reference to a notice of violation (NOV) concerning QA issues that the NRC Staff issued to DTE on October 5, 2009, and lists the three violations contained therein. *Fermi*, 71 NRC at 510; see also NRC Inspection Report 05200033/2009-201 and Notice of Violation (Oct. 5, 2009), ADAMS Accession No. ML092740064 (Staff Exhibit 2). A second paragraph labeled Contention 15A focuses on alleged QA deficiencies at the time the Fermi 3 COLA was prepared, and states that the NRC “may not lawfully issue the COL until the deficiencies have been adequately corrected by the Applicant, or until the Applicant demonstrates that the deficiencies do not affect the quality of safety-related design information in the FSAR.” *Fermi*, 71 NRC at 510. A third paragraph, labeled Contention 15B, focuses on future rather than past activities and states that

[t]he NRC cannot support a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety until DTE provides satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC regulations.

Id. at 511.

The three sections that follow address the three paragraphs of the contention in turn. As discussed below, all issues related to all parts of Contention 15 have been addressed by the Applicant, and the NRC Staff's review has been completed and documented in Chapter 17 of the Advanced SER With No Open Items. See *generally* Staff Exhibit 1. For this reason, no genuine issue of material fact remains and the Applicant is entitled to summary disposition on all portions of the contention.

A. All Enforcement Issues Related to the October 2009 NOV Have Been Resolved

The technical basis for Contention 15 is an NOV issued to DTE on October 9, 2009, which included three specific violations related to the Applicant's QA program:

- A. failed to establish and implement a Fermi Unit 3 quality assurance (QA) program between March 2007, when the initial contract was placed with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) activities, until February 2008, and retain overall control of safety-related activities performed by B&V;
- B. had not completed any internal audits of QA programmatic areas implemented for Fermi 3 COL application activities performed to date; and
- C. had not documented trending of corrective actions to identify recurring conditions adverse to quality since the beginning of Fermi 3 project in March 2007.

Staff Exhibit 2 at 1-3. All three violations were Severity Level IV. *Id.* The first paragraph of Contention 15 restates these three violations. See *Fermi*, 71 NRC at 510. Because the violations cited in the NOV form the basis for the specific issues raised in Contentions 15A and 15B, this section describes the resolution of the three violations and demonstrates that no enforcement issues related to the October 2009 NOV remain.

As noted by the Intervenor in their Reply and described in Staff affidavits attached hereto, discrepancies in DTE's QA documentation were identified by NRC Staff reviewers in June 2009 and discussed in internal Staff e-mails. See Intervenor's Reply at 3-4; Declaration of Aida Rivera-Varona (Rivera-Varona Decl.) ¶ 4; Declaration of Mark Tonacci ¶ 3-5. Following internal discussions, the NRC Staff conducted an inspection at DTE headquarters in August

2009 in order to resolve its concerns related to DTE's QA documentation. The inspection team was led by Aida Rivera-Varona, who initially identified the discrepancies and authored some of the cited e-mails, and included the primary technical reviewer for Chapter 17 of the SER.

Rivera-Varona Decl. ¶ 6; Declaration of George Lipscomb (Lipscomb Decl.) ¶ 3. Following the August 2009 inspection, the NRC Staff issued the October 2009 NOV described above. The sequence of events leading to the resolution of this NOV is described in SER Chapter 17 and summarized below. See Staff Exhibit 1 at 17-32 to 17-36.

The Applicant responded to the NOV and denied the violations, arguing in part that DTE was not an applicant prior to submitting the Fermi 3 COLA on September 18, 2008, and that it could therefore not be cited for violations related to events that occurred prior to that date. Staff Exhibit 1 at 17-33; Lipscomb Decl. ¶ 5. See *a/so* Detroit Edison Reply to a Notice of Violation 05200033/2009-201-01, 02, and 03 (Nov. 9, 2009), Attach. 1 at 3, ADAMS Accession No. ML093160318 (Staff Exhibit 3). The Staff agreed that no violations can be issued for actions or omissions occurring before the COLA was submitted to the NRC, and therefore issued a revised NOV that included a new Violation A limited to activities after the COLA submission date. Staff Exhibit 1 at 17-33; Lipscomb Decl. ¶ 6. See *a/so* NRC Response to Detroit Edison Reply to a Notice of Violation 05200033/2009-201-01, 02, and 03 and Revised Notice of Violation to Detroit Edison Company (Apr. 27, 2010), ADAMS Accession No. ML100330687 (Staff Exhibit 4). The April 2010 NOV also combined Violations B and C into a single item, and therefore contained two Severity Level IV violations:

- A. from September 18, 2008 to August 21, 2009, DECo failed to establish measures to assure that safety-related services purchased through its contractor, Black & Veatch (B&V) for Fermi 3, conformed to procurement documents. Specifically, DECo failed to assure that B&V was qualified to supply the services procured in the contract between DECo and B&V.
- B. as of August 21, 2009, DECo had not accomplished procedures for activities affecting quality as prescribed in DECo Procedure Number NP 18.1 and NP 16.1. Specifically, DECo QA personnel had not completed any internal audits of applicable QA programmatic areas for Fermi 3 COL application activities to verify compliance with all aspects of the quality assurance program and to

determine the effectiveness of the program in accordance with NP18.1. Additionally for conditions adverse to quality, which were entered into the corrective action program prior to the inspection, DECo had not documented any trending evaluations to identify and correct recurring conditions adverse to quality for Fermi 3 COL application activities in accordance with NP16.1.

Staff Exhibit 4, Enclosure 2 at 1-2. The revised NOV also stated that the Applicant's November 2009 response to the October 2009 NOV included corrective actions that resolved the Violations B and C (now combined as Violation B), specifically that the Applicant conducted an internal audit and performed the necessary trending evaluations. See Staff Exhibit 4 at 2; Staff Exhibit 1 at 17-34.

The Applicant responded to Violation A of the April 2010 NOV in a letter admitting the violation and outlining the corrective steps taken to address it. See Staff Exhibit 1 at 17-33; Detroit Edison Company Reply to Notice of Violation 05200033/2009-201-04 (May 26, 2010), ADAMS Accession No. ML101480046 (Staff Exhibit 5). Specifically, the Applicant noted that it expanded its vendor qualification and review program, and listed the series of steps taken to ensure that B&V's work on the Fermi 3 COLA was completed in accordance with 10 C.F.R. Part 50, Appendix B requirements. Staff Exhibit 5, Attach. 1 at 3. The Staff documented its acceptance of this response in a letter dated June 4, 2010. Nuclear Regulatory Commission Inspection Report 05200033/2009-201 and Revised Notice of Violation to Detroit Edison Company (June 4, 2010), ADAMS Accession No. ML101530596 (Staff Exhibit 6). Because of the steps taken to resolve the violations, the Staff concluded that the Applicant's activities are now consistent with the requirements of Appendix B to 10 C.F.R. Part 50. Staff Exhibit 1 at 17-34.

In summary, all issues related to internal audits and trending evaluations (Violations B and C in the October 2009 NOV; Violation B in the April 2010 NOV) were resolved in the November 2009 NOV response. Staff Exhibit 4 at 2; see *also* Motion at 30-35. The issues related to vendor qualification and oversight in Violation A of the April 2010 NOV were resolved in the May 2010 NOV response. Staff Exhibit 6 at 1. There are no additional violations related

to Contention 15 pending against DTE. Because all issues related to internal audits, trending evaluations, and DTE oversight over B&V subsequent to COLA submission on September 18, 2008, were resolved through the NOV process, portions of Contention 15 that reference those issues no longer have a technical basis. According to NRC regulations, “if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.” 10 C.F.R. § 2.710(d)(2). Therefore, summary disposition is appropriate for those portions of Contention 15 that were resolved through the NOV process.

B. Pre-Application Issues Related to Contention 15A Have Been Resolved

Contention 15A focuses on alleged QA deficiencies at the time the Fermi 3 COLA was prepared, and states that the NRC “may not lawfully issue the COL until the deficiencies have been adequately corrected by the Applicant, or until the Applicant demonstrates that the deficiencies do not affect the quality of safety-related design information in the FSAR.” *Fermi*, 71 NRC at 510. As previously noted, pre-application activities (those carried out before submission of the COLA on September 18, 2008) were not addressed in the NOV resolution process described above. Instead, the Staff used the Request for Additional Information (RAI) process to resolve pre-application issues related to Contention 15A. This process is documented in Chapter 17 of the SER. Staff Exhibit 1 at 17-34 to 17-35. The Applicant’s RAI responses and corresponding updates to the COLA resolve all staff concerns related to DTE’s oversight of B&V during the period when the COLA was developed, see Rivera-Varona Decl. ¶ 8; Lipscomb Decl ¶¶ 4, 8, and demonstrate that deficiencies originally cited in the October 2009 NOV “do not affect the quality of safety-related design information in the FSAR.” *Fermi*, 71 NRC at 510. The NRC also conducted two audits of B&V directly, and those audits support the Staff’s conclusions regarding the RAIs. As described further below, because no issues

related to Contention 15A remain in dispute, summary disposition of this portion of the contention is appropriate according to the provisions of 10 C.F.R. §§ 2.1205(c) and 2.710(d).

1. *Resolution of Contention 15A Issue by RAI*

The Staff issued three RAIs to the Applicant that addressed the specific issue raised in Contention 15A, i.e., whether the deficiencies cited in the October 2009 NOV affect the quality of safety-related design information in the Fermi 3 COLA. See Staff Exhibit 1 at 17-34; *Fermi*, 71 NRC at 510. The Applicant's response to these RAIs contains the requested information related to the development of safety-related COL application sections for the Fermi 3 project beginning in January 2007. See Detroit Edison Company Response to NRC Request for Additional Information Letter No. 26, Related to SRP Section 17.5 (May 10, 2010), ADAMS Accession No. ML101320254 (Staff Exhibit 7). In its response, the Applicant provided the following information: (1) a list of safety-related activities and safety-related COLA sections; (2) dates of the activity or section creation; (3) the contracting entity conducting the activity/section creation and governing QA; (4) the QA organization responsible for oversight of the activity/section creation; (5) information related to the contractors conducting QA oversight activities (e.g., surveillance, document review); (6) contractor approval dates; (7) dates of the Applicant's review and approval; (8) dates and type of Applicant QA oversight activities; (9) personnel information for both Applicant and contractor organizations; and (10) a summary of the various versions of the Fermi 3 Quality Assurance Program Document (QAPD) and related implementation procedures. *Id.*

For activities occurring before submission of the COLA on September 18, 2008, the Staff determined that the Applicant had contractually delegated to B&V the work of developing and implementing a QA program for COLA development that satisfied the requirements of 10 C.F.R. Part 50, Appendix B, and that B&V had established such a program. Staff Exhibit 1 at 17-35; Lipscomb Decl. ¶¶ 8, 10; see *also* Motion at 14-26. The Staff also determined that the Applicant was not required to establish a full QA program meeting all requirements of Appendix

B prior to submitting the COLA to the NRC, but that DTE did establish the Nuclear Development (ND) QAPD that included those elements of an Appendix B QA program necessary to support the review and acceptance of B&V work product. Staff Exhibit 1 at 17-35; see *also* Motion at 26-29.

The Applicant's RAI response included a list of proposed changes to the COLA that addressed the Staff's concerns. See Staff Exhibit 7, Attach. 5. The Staff confirmed that these changes addressed the issues raised in the RAIs and that all changes to the COLA proposed in the RAI response were incorporated into a subsequent revision of the Application. These RAIs are now closed, Staff Exhibit 1 at 17-36, and the NRC Staff has concluded that pre-application deficiencies in DTE's QA documentation do not affect the information in the COLA. Lipscomb Decl. ¶ 4. Accordingly, because the RAI responses demonstrate that the deficiencies cited in the October 2009 NOV do not affect the quality of safety-related design information in the Fermi 3 COLA, and there are no other unresolved issues related to Contention 15A, summary disposition of this portion of the contention is warranted.

2. *Staff Audits of B&V Confirm Resolution of Contention 15A*

The Staff's conclusions related to information provided by DTE in its RAI responses are confirmed by two independent Staff audits of B&V activities. In July 2007, the staff conducted a field audit of pre-application subsurface investigations carried out to support the site characterization discussion in the Fermi 3 COLA. Letter from Mark S. Lesser, Division of Construction Inspection, NRC, to Douglas R. Gipson, DTE, Audit of Combined License Pre-Application Subsurface Investigation Activities at Fermi (Project No. 757) (Aug. 8, 2007), ADAMS Accession No. ML072210911 (Staff Exhibit 8). The Staff reviewed B&V's QA program at the time of the audit and determined that "[d]rilling and field testing activities were controlled by adequate procedures and standards with an appropriate level of supervisory and quality assurance oversight." *Id.* at 3-4. See *also* Motion at 21.

The NRC Staff also conducted a routine vendor inspection of B&V in 2010. Lipscomb Decl. ¶ 9-10. The NRC staff issued a B&V inspection report and NOV on October 14, 2010 NRC Inspection Report No. 99901391/2010-201 and Notice of Violation, ADAMS Accession No. ML102790137 (Staff Exhibit 9). The inspection report found no violations of the QA requirements in Appendix B of 10 C.F.R. Part 50. Lipscomb Decl. ¶ 10. The NOV identified one violation of 10 CFR Part 21 requirements for activities not directly related to Fermi 3, and, the NRC staff documented closure of the NOV in a letter dated December 17, 2010. NRC Inspection Report No. 99901391/2010-201 and Notice of Violation ML103500064 (Staff Exhibit 10). In sum, these audits confirm that the B&V QA program was adequate and that deficiencies cited in the October 2009 NOV do not affect the quality of safety-related design information in the Fermi 3 COLA

3. *Conclusion*

Contention 15A questioned whether the deficiencies cited in the October 2009 NOV affect the quality of safety-related design information in the Fermi 3 COLA. As described above, this issue has been addressed; by means of the RAI process, the Staff confirmed that pre-application deficiencies in DTE's QA documentation "do not affect the quality of safety-related design information in the [Fermi 3] FSAR." Staff Exhibit 1 at 17-36, Lipscomb Decl. ¶ 4. Further, the Applicant has demonstrated that the safety-related information in the Fermi 3 COLA was developed under a QA program that meets the requirements of 10 C.F.R. Part 50, Appendix B. The NRC's independent audits of B&V provide additional confirmation of this conclusion. Because this issue has been resolved, and because there are no other issues related to this portion of the contention, summary disposition of Contention 15A is warranted according to the provisions 10 C.F.R. §§ 2.1205(c) and 2.710(d)(2).

C. All Issues Related to Contention 15B Have Been Resolved

Contention 15B focuses on future rather than past activities and states that

[t]he NRC cannot support a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety until DTE provides satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC regulations.

Fermi, 71 NRC at 511. The Applicant discusses the Fermi 3 QAPD in its motion, see Motion at 30-40, and the Staff agrees with the Applicant's representation of the contents of that document. Rather than restate information the Applicant has already provided, the Staff will focus on its review of the Fermi 3 QA program in Chapter 17 of the SER as it relates to Contention 15B.

The Staff's review of the Fermi 3 QAPD, which is documented in Section 17.5 of the SER, assesses the information DTE provided related to its QA program and compliance with applicable NRC regulations. Staff Exhibit 1 at 17-14 to 17-36. The SER describes the regulatory basis against which the Applicant's documents were evaluated, including Appendix B of 10 C.F.R. Part 50 and those Part 52 regulations that incorporate Appendix B into the regulations governing combined licenses. *Id.* at 17-14. The SER also describes the NRC's Standard Review Plan (SRP), which the Staff developed using the American Society of Mechanical Engineer's ASME NQA-1-1994, "Quality Assurance Requirements for Nuclear Facility Applications," supplemented by additional regulatory and industry guidance for nuclear operating facilities, and which the Staff used in evaluating DTE's QA program. *Id.* at 17-14 to 17-15, citing Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition (NUREG-0800) (March 2007), ADAMS Accession No. ML063190019 (Staff Exhibit 11). The SRP provides an outline of an acceptable QA program and acceptance criteria used by the NRC Staff in its review.

The NRC Staff reviewed the Fermi 3 QAPD against the acceptance criteria in SRP Section 17.5 in nineteen areas: (1) Organization; (2) Quality Assurance Program; (3) Design Control; (4) Procurement Document Control; (5) Instructions, Procedures, and Drawings; (6)

Document Control; (7) Control of Purchased Material, Equipment, and Services; (8) Identification and Control of Materials, Parts, and Components; (9) Control of Special Processes; (10) Inspection; (11) Test Control; (12) Control of Measuring and Test Equipment; (13) Handling, Storage, and Shipping; (14) Inspections, Tests, and Operating Status; (15) Nonconforming Materials, Parts, or Components; (16) Corrective Action; (17) Quality Assurance Records; (18) Quality Assurance Audits; and (19) Non-safety-Related SSC Quality Assurance Control. Staff Exhibit 1 at 17-15 to 17-30.

The Applicant has submitted all information requested by the Staff, the Staff's review is complete, and SER Chapter 17 has been presented to the ACRS. Muñiz Decl. ¶¶ 5-6, Lipscomb Decl. ¶ 11. Based on its review, Staff concluded that the Fermi 3 QAPD meets the requirements of Appendix B to 10 C.F.R. Part 50. Staff Exhibit 1 at 17-36; Lipscomb Decl. ¶ 4. The Applicant has therefore provided "satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC regulations." See *Fermi*, 71 NRC at 511. Because no issues related to the current QA plan at Fermi 3 remain in dispute, the Applicant is entitled to summary disposition of Contention 15B according to the provisions of 10 C.F.R. §§ 2.1205(c) and 2.710(d)(2).

In summary, based on the above, the Applicant has provided full documentation related to its QA program both to the NRC Staff as part of the normal review of its COLA and to the Board and the Intervenors in support of the Motion currently under consideration. In moving for summary disposition, the movant bears the initial burden of showing that there is no genuine issue as to any material fact. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102-03 (1993). The Applicant has made the requisite showing here. There are no issues from any portion of Contention 15 that remain in dispute; accordingly, the Applicant is entitled to summary disposition.

CONCLUSION

The NRC Staff agrees that there are no issues from any portion of Contention 15, as admitted, that remain in dispute at this time. Accordingly, the Applicant is entitled to summary disposition according to the provisions of NRC regulations.

Respectfully Submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 7th day of May, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO APPLICANT'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION 15 have been served upon the following persons by Electronic Information Exchange and electronic mail this 7th day of May, 2012, with affidavits and exhibits:

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Dated at Rockville, Maryland
this 7th day of May, 2012