

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) )

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 (“Detroit Edison”). In my current position I have overall responsibility for the combined license (“COL”) application for Fermi Unit 3. I provided input to and have reviewed the motion for summary disposition and I affirm its accuracy.

2. In a letter dated February 15, 2010, I provided, on behalf of Detroit Edison, a response to several Nuclear Regulatory Commission (“NRC”) Staff Requests for Additional Information (“RAIs”) regarding the presence of the Eastern Fox snake (“fox snake”) at the Fermi 3 site and possible mitigation measures.<sup>1</sup>

3. In NRC3-10-0005, Detroit Edison provided updated information regarding the location of fox snake sightings, revised its application to implement changes to 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.

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<sup>1</sup> 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) (“NRC3-10-0005”).

4. 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 fox snake habitat.<sup>2</sup> The revised site layout reduced wetland impacts by approximately 127 acres (to approximately 40 acres).<sup>3</sup> As described Detroit Edison's Mitigation Plan, approximately 20 acres (50 percent) of the remaining impacted acreage will be temporary impacts and the wetlands will be restored following construction.<sup>4</sup> The changes to the site layout reduced impacts to all currently-undeveloped areas, including both wetland areas and non-wetland areas.<sup>5</sup> Moreover, for the undeveloped areas that would be impacted by construction (including wetland and non-wetland areas), approximately 147 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.<sup>6</sup> These changes were reflected in revisions to the Fermi Unit 3 Environmental Report ("ER"). The State of Michigan accepted the revised site

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<sup>2</sup> See NRC3-09-0017, Attachment 2, at Figure 2.1-4 (responding to RAI GE3.1-1) (ADAMS Accession No. ML093650120); NRC3-11-0001, Attachment 1, at Figure 2.1-4 (ADAMS Accession No. ML110110551); NRC3-11-0026, Attachment 1, at Figure 2.1-4 (ADAMS Accession Nos. ML11200A049 and ML11200A050). The NRC relied upon Revision 3 to complete its draft EIS. See Meeting Notes from the Onsite Meetings on August 8-9, 2011, to Discuss the Fermi 3 Site Layout and Conceptual Aquatic Resource (Wetland) Mitigation Plan, dated Dec. 5, 2011 (ADAMS Accession No. 11332A158).

<sup>3</sup> See NRC3-11-0026, Attachment 1, at ER mark-up Section 4.3.1.2.2 (page 4-48 to 4-49).

<sup>4</sup> Detroit Edison, "Habitat and Species Conservation Plan: Eastern Fox Snake (*Elaphe gloydi*)," March 2012, Appendix C at 1.

<sup>5</sup> See *id.* at 4-49. All undeveloped areas are assumed to be suitable fox snake habitat.

<sup>6</sup> *Id.* at 4-5.

layout during its review of the Detroit Edison's wetland permit application. Detroit Edison received its final MDEQ wetland permit on January 24, 2012.<sup>7</sup>

5. To offset habitat loss during construction of the Fermi 3 facility, approximately 20 acres of temporarily impacted wetlands at the Fermi site will be restored to fox snake habitat after construction. Restoration will address foraging grounds, basking sites, shelter, snags, hibernacula, and nesting sites. Removal of certain invasive plant species will be conducted in targeted areas to enhance and improve habitat viability for snakes and other wildlife. Enhancement may also include the creation of wildlife culverts and permanent barrier fences in selected areas of high fox snake activity within the Fermi 3 site area.

6. Detroit Edison will also create new fox snake habitat as part of its wetlands mitigation efforts, if Fermi 3 construction goes forward. Specifically, Detroit Edison will restore wetland and enhance existing wetlands in the coastal zone of Western Lake Erie. Habitat restoration will include multiple community types used by fox snakes such as Great Lakes Coastal Marsh, Southern Hardwood Swamp, and Inundated shrub swamp. In addition, upland habitat restoration and enhancement will occur. Habitat restoration design will account for the fox snake's habitat needs and natural history. Habitat features will include foraging grounds, basking sites, shelter, snags, hibernacula, and nesting sites. The restoration will also benefit other species of herpetofauna known to occur in the region.

7. In order to further reduce the potential impacts to fox snakes, Detroit Edison also developed a *Habitat and Species Conservation Plan: Eastern Fox Snake (Elaphe gloydi)* ("Mitigation Plan") for construction activities. The plan describes measures to enhance

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<sup>7</sup> MDEQ Wetland Permit No. 10-58-011-P, dated January 24, 2012 (ADAMS Accession No ML12037A243).

employee awareness of the Eastern Fox snake and to reduce impacts to fox snakes and their habitat from Fermi 3 construction activities.

8. The Mitigation Plan, Revision 1, was submitted to the Michigan Department of Natural Resources and the Environment (“MDNRE”) for their review and comment. On April 6, 2012, Lori Sargent, Endangered Species Specialist, MDNRE, sent a letter to Detroit Edison regarding MDNRE’s review of the Mitigation Plan. MDNRE found the Mitigation Plan acceptable.

9. Detroit Edison will implement the Mitigation Plan as part of Fermi 3 construction activities.

10. 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 11th of June 2012