

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO APPLICANT'S MOTION  
FOR LEAVE TO FILE A REPLY ON CONTENTION 8

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the motion filed on July 9, 2012, by the Detroit Edison Company (Applicant or Detroit Edison). See Applicant's Motion for Leave to File a Reply on Contention 8 (July 9, 2012) (Motion). The Applicant requested leave to file a reply to the Intervenors' Response in Opposition to Applicant's Motion for Summary Disposition of Contention 8 (Eastern Fox Snake), dated July 2, 2012 (Intervenors' Response).

The Applicant's Motion describes several arguments raised for the first time in the Intervenors' Response. These include challenges to the Michigan Department of Natural Resources' (MDNR) compliance with state law in approving the Applicant's mitigation plan, claims regarding MDNR's ability to enforce the plan, and complaints about the potential for land contamination at the wetland mitigation site. See Motion at 3; Reply to Response in Opposition to Summary Disposition of Contention 8 at 1-3 (July 9, 2012); see *also* Intervenors' Response at 5-8, 10. The Staff agrees with the Applicant that these issues had not been previously raised by the Intervenors and are outside the scope of Contention 8 as admitted by the Board. The Board has indicated that seeking leave to reply is appropriate under these circumstances. See Licensing Board Memorandum and Order (Denying Motions for Summary Disposition of Contentions 6 and 8; Denying in Part and Granting in Part Motion to Strike), LBP-11-14,

\_\_ NRC \_\_ (slip op. at 22 n.108) (May 20, 2011) (*citing Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site)*, LBP-08-2, 67 NRC 54, 66-67 (2008)).

Accordingly, the Staff supports the Motion to the extent it asserts that the Applicant should be granted leave to reply, both because the Intervenors presented new information and arguments for the first time in their response to the Applicant's summary disposition motion and because these arguments are outside the scope of the contention as admitted.

Respectfully Submitted,

**/Signed (electronically) by/**

Marcia Carpentier  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-4126  
Marcia.Carpentier@nrc.gov

**/Executed in accord with**

**10 C.F.R. 2.304(d)/**

Anthony C. Wilson  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-3699  
Anthony.Wilson@nrc.gov

Dated at Rockville, Maryland  
This 19<sup>th</sup> day of July, 2012

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO APPLICANT'S MOTION FOR LEAVE TO FILE A REPLY ON CONTENTION 8 have been served upon the following persons by Electronic Information Exchange and electronic mail this 19th day of July, 2012:

Ronald M. Spritzer, Chair Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Ronald.Spritzer@nrc.gov	Office of Commission Appellate Adjudication Mail Stop O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail:OCAAmail@nrc.gov
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Anthony J. Baratta Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Anthony.Baratta@nrc.gov	Office of the Secretary ATTN: Docketing and Service Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov
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Randall J. Charbeneau Administrative Judge Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Randall.Charbeneau@nrc.gov	Bruce R. Matters Detroit Edison Company One Energy Plaza, 688 WCB Detroit, Michigan 48226 E-mail: matersb@dteenergy.com
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David Repka, Esq.  
Tyson R. Smith, Esq.  
Counsel for the Applicant  
Winston & Strawn, LLP  
1700 K Street, NW  
Washington, DC 20006-3817  
E-mail: drepka@winston.com  
trsmith@winston.com

Terry J. Lodge, Esq.  
Counsel for Petitioners  
316 N. Michigan St., Ste. 520  
Toldeo, OH 43604-5627  
E-mail: tjlodge50@yahoo.com

Respectfully Submitted,

**/Signed (electronically) by/**

Marcia Carpentier  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(301) 415-4126  
Marcia.Carpentier@nrc.gov

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Anthony C. Wilson  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
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Washington, DC 20555-0001  
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