

May 30, 2013

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 BRIEF OPPOSING SUA SPONTE REVIEW OF
ENVIRONMENTAL IMPACTS IN THE OFFSITE TRANSMISSION CORRIDOR

INTRODUCTION

As directed by the Memorandum and Order, dated April 30, 2013, DTE Electric Company (“DTE”) hereby addresses whether the issues raised in proposed Contention 23 regarding the NRC Staff’s consideration of offsite transmission impacts in the Fermi 3 Final Environmental Impact Statement (“FEIS”) satisfy the criteria in 10 C.F.R. § 2.340(b) for *sua sponte* consideration by the Board.¹ For the reasons discussed below, the issues raised by the Intervenor do not involve a “serious” environmental matter, nor are “extraordinary circumstances” present. The NRC Staff has addressed impacts in the transmission corridor in a manner consistent with NRC guidance, Commission precedent, and the requirements of the National Environmental Policy Act (“NEPA”). As a result, *sua sponte* review and referral to the Commission are not warranted.

¹ Memorandum and Order (Denying Intervenor’s Motion for Resubmission of Contentions 3 and 13, for Resubmission of Contention 23 or its Admission as a New Contention, and for Admission of New Contentions 26 and 27), dated April 30, 2013 (“FEIS Order”).

BACKGROUND

A. Authority To Raise Issues *Sua Sponte*

Under the Commission's Rules of Practice, a licensing board may consider matters *sua sponte* only where it finds that a "serious" safety, security, or environmental matter exists.² The Commission has made clear that such authority is to be exercised only in "extraordinary circumstances."³ If a board decides to raise matters on its own initiative, a copy of its ruling, setting forth in general terms its reasons, must be transmitted to the Commission and the NRC General Counsel.⁴ The board may not proceed further with *sua sponte* issues absent the Commission's express approval.⁵

B. Procedural History of Rejected Contention 23

The Intervenor's first submitted Contention 23 based on the DEIS.⁶ The original Contention 23 alleged that "[t]he high-voltage transmission line portion of the project involves a

² 10 C.F.R. § 2.340(b).

³ "Policy on Conduct of Adjudicatory Proceedings; Policy Statement," 63 Fed. Reg. 41872, 41874 (Aug. 5, 1998).

⁴ *Texas Utilities Generating Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981).

⁵ 10 C.F.R. § 2.340(b). Although the Intervenor's cite *Tennessee Valley Authority* (Hartsville Nuclear Plant Units 1A, 2A, 1B, and 2B), ALAB-380, 5 NRC 572, 575 (1977), for the proposition that "[l]icensing boards have independent responsibilities in the realm of the enforcement of the NEPA command," the authority is outdated. The Commission's 1998 Policy Statement makes clear that *sua sponte* authority should be exercised only in extraordinary circumstances. 63 Fed. Reg. at 41874. Moreover, for COL applications, the Commission, not the Licensing Board, is responsible for conducting hearings on uncontested issues, including the assessment of the sufficiency of the NRC Staff's reviews under NEPA. "Mandatory Hearing Process For Combined License Application Proceedings Under 10 C.F.R. Part 52," SRM-SECY-10-0082, dated December 23, 2010; "Revisions to Internal Commission Procedures Section on Mandatory Hearings," SRM-SECY-11-0042, dated May 3, 2011.

⁶ LBP-12-12 at 42.

lengthy corridor which is inadequately assessed and analyzed in the [DEIS]” and asserted that the analysis of “the environmental impacts to the approximately 1,000 acres of transmission corridor is deficient.”⁷ The Board found the proposed contention untimely because it was not based on any new or materially different information presented in the DEIS.⁸ The Board concluded that the Intervenor’s challenge could have and should have been made based on DTE’s Environmental Report (“ER”). The Board rightly pointed out that each of the issues that comprised the subject matter of the contention was in fact discussed in the ER, including the route of the transmission corridor and impacts on historic and cultural resources, endangered or threatened species, and wetlands and vegetation.⁹

Nevertheless, in LBP-12-12 the Board highlighted the NRC Staff’s DEIS description of transmission line construction as a “preconstruction activity” and the NRC Staff’s reference to the agency’s lack of regulatory authority over transmission line construction, which would be sited and built by an entity other than DTE.¹⁰ To the extent these considerations were intended to imply that the DEIS need not evaluate in detail the environmental impacts of the transmission corridor, the Board stated that it was not persuaded.¹¹ The Board noted the need for agencies to address “connected actions” under NEPA and recommended that the NRC Staff consider the issues raised by Intervenor when it prepared the FEIS.¹²

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 42-43.

¹⁰ *Id.* at 45-46.

¹¹ *Id.*

¹² *Id.* at 49.

The Intervenors subsequently resubmitted Contention 23 following publication of the FEIS.¹³ In the FEIS Order, the Board again rejected Contention 23 as untimely. However, the Board also stated that this would be an appropriate point for the Board to decide whether the issues in Contention 23 merit *sua sponte* review. Since the parties have not previously addressed the issue, the Board requested their views on whether *sua sponte* review is appropriate.

C. FEIS Discussion of Environmental Impacts in the Offsite Transmission Corridor

In the Fermi 3 FEIS, the NRC Staff explains that the Commission has limited the definition of “construction” to those activities that fall within its regulatory authority.¹⁴ Activities associated with Fermi 3 that are not within the purview of the NRC, including building of transmission lines, are characterized as “preconstruction.”¹⁵ The FEIS explains that impacts from preconstruction activities are not reviewed as a direct effect of the NRC action, but rather are considered in the context of “cumulative” impacts.¹⁶ The NRC follows this approach throughout the Fermi 3 FEIS.

The FEIS observes (at 2-45) that any new offsite transmission lines would be owned and operated by *ITCTransmission* and that DTE has no control over the siting, design, or operation of offsite transmission lines. And, the FEIS explains that *ITCTransmission* has not yet formally announced the route for the offsite portion of a new transmission line serving Fermi 3.¹⁷

¹³ “Motion for Resubmission of Contentions 3 and 13, for Resubmission of Contention 23 or its Admission as a New Contention, and for Admission of New Contentions 26 and 27” (“New Contentions”), dated February 19, 2013.

¹⁴ FEIS at 1-6.

¹⁵ *Id.*; see also 10 C.F.R. § 50.10(a)(2)(vii).

¹⁶ FEIS at 1-7.

¹⁷ *Id.* at 2-10.

Accordingly, the NRC Staff relied on publicly available information and reasonable expectations of the configurations that *ITCTransmission* would likely use for the offsite transmission corridor based on standard industry practice. In this regard, the FEIS notes that the proposed new transmission line is expected to be built within an existing transmission corridor for approximately 18.6 miles extending outward from the Fermi site boundary.¹⁸ The remaining 10.8 miles, extending to the Milan Substation, would be built within an undeveloped right-of-way owned, but not yet used, by *ITCTransmission*.¹⁹

The FEIS describes the environmental attributes of the anticipated transmission corridor in Chapter 2, including land use,²⁰ terrestrial and wetland ecology,²¹ aquatic ecology,²² and historic and cultural resources.²³ Chapter 4 discusses impacts of construction on the transmission corridor, including land use,²⁴ terrestrial and wetland ecology,²⁵ aquatic ecology,²⁶ and historic and cultural resources.²⁷ Chapter 4 also contains a “bounding analysis” of potential

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2-45, 2-61.

²² *Id.* at 2-79, 2-82, 2-126.

²³ *Id.* at 2-208 to 2-209.

²⁴ *Id.* at 4-8.

²⁵ *Id.* at 4-29, 4-45.

²⁶ *Id.* at 4-51 to 4-53.

²⁷ *Id.* at 4-100 to 4-102.

wetland impacts from transmission corridor construction.²⁸ Chapter 5 discusses the impacts of operation of the transmission lines on land use,²⁹ terrestrial and wetland ecology,³⁰ aquatic ecology,³¹ air quality,³² and non-radiological health.³³ The NRC also specifically addressed transmission-related impacts in Chapter 7, *Cumulative Impacts*. For example, the FEIS considered cumulative impacts of transmission lines on land use,³⁴ terrestrial and aquatic resources,³⁵ historic and cultural resources,³⁶ and non-radiological health impacts.³⁷

All of these impacts are summarized in Appendix M, *Environmental Impacts from Building and Operating Transmission Lines Proposed to Serve Fermi 3*. Appendix M provides a roadmap to the sections in the FEIS that specifically discuss the environmental impacts from transmission lines.

²⁸ See FEIS at 4-44 to 4-45, J-2 (noting that the Corps of Engineers could potentially identify additional practicable avoidance and/or minimization measures during its evaluation that could result in the USACE-identified least environmentally damaging practicable alternative (“LEDPA”) having fewer adverse impacts on waters of the United States than the proposed LEDPA and explaining that any subsequent changes to the proposed site plan and/or activities as a consequence of the USACE-identified LEDPA would result in fewer adverse impacts on waters of the United States than identified in the FEIS) (emphasis added).

²⁹ *Id.* at 5-3 to 5-4.

³⁰ *Id.* at 5-22, 5-27.

³¹ *Id.* at 5-41 to 5-43.

³² *Id.* at 5-100 to 5-101.

³³ *Id.* at 5-104.

³⁴ *Id.* at 7-7.

³⁵ *Id.* at 7-18 to 7-21.

³⁶ *Id.* at 7-31 to 7-33.

³⁷ *Id.* at 7-37.

D. Response to Specific Board Questions

In the FEIS Order, the Board solicited input, through documentary evidence and/or affidavits, on the following factual issues:

- (1) The current status of planning for and development of the transmission line corridor;
- (2) Whether any permits necessary for development of the transmission line corridor have been applied for;
- (3) Whether any routes for the transmission line corridor are currently being actively evaluated other than the proposed route shown in the FEIS, page 2-11; and
- (4) Whether the transmission line is likely to be constructed even if Fermi Unit 3 is not built.

The affidavit of Peter Smith filed with this pleading addresses these topics. Mr. Smith provides an overview of the transmission planning process for Fermi 3 and discusses its current status. Mr. Smith explains that the offsite portions of the proposed transmission system and associated corridors would be owned and operated by *ITCTransmission*, and he notes that DTE has no control over the siting, construction, or operation of the offsite transmission system.³⁸ Mr. Smith discusses the System Impact Study that the Midwest Independent Transmission System Operator (“MISO”) requested from *ITCTransmission* and the subsequent Generator Interconnection Agreement (“GIA”).³⁹ Mr. Smith emphasizes that *ITCTransmission*, not DTE, must follow applicable regulatory processes and approvals in order to implement changes to the transmission system.⁴⁰

³⁸ Smith Affidavit at ¶11.

³⁹ *Id.* at ¶10.

⁴⁰ *Id.*

Mr. Smith also notes that he is not aware of any additional transmission routes under consideration, though he highlights statements in the GIA suggesting that the final transmission route will be determined in a Certificate of Public Convenience and Necessity (“CPCN”) from the Michigan Public Service Commission (“MPSC”).⁴¹ Finally, Mr. Smith declines to speculate on the likelihood of the transmission line being constructed without Fermi 3, but notes that the proposed offsite transmission system upgrades could support development of other generation sources.⁴²

DISCUSSION

A. The Issues Raised Do Not Warrant *Sua Sponte* Review

According to the Commission, *sua sponte* review is warranted only where the Board has identified a “serious” safety, security, or environmental matter not properly raised by the parties. Such authority is to be exercised only in “extraordinary circumstances.”⁴³ The issues raised by the Intervenors in rejected Contention 23 are not “serious” nor are the present circumstances “extraordinary.”

First, the reference to a “serious” safety, security, or environmental matter implies a level of significance that simply does not exist with respect to the environmental impacts of the offsite transmission corridor discussed in the Fermi 3 FEIS. A serious safety issue is one that demonstrates a significant risk to public health and safety. A serious safety issue might involve a flaw or defect in a structure or equipment that, if uncorrected, might lead to offsite releases of radiation. Examples of safety issues that boards have at least considered for *sua sponte* review

⁴¹ *Id.* at ¶¶10, 12-13.

⁴² *Id.* at ¶14.

⁴³ 63 Fed. Reg. at 41874.

include containment leak testing and control room habitability matters, breakdowns in construction quality assurance, unresolved safety issues (e.g., turbine missiles), decay heat removal, and the adequacy of the Safe Shutdown Earthquake.⁴⁴ Correspondingly, a serious environmental issue would be one that involves a significant environmental impact of a type not considered previously. To be serious, an issue would need to be one that could destabilize an environmental resource or that involved severe adverse environmental impacts.⁴⁵

Here, the issues raised by the Board are far from serious. The Intervenors and the Board have expressed some dissatisfaction with the NRC Staff's treatment of transmission corridor impacts, but their concerns involve only the level of detail and depth of analysis of transmission impacts in the FEIS. There is no indication of a potential health and safety risk to the public or workers. And, there is no evidence offered that any dangerous or destabilizing

⁴⁴ See, e.g., *Cincinnati Gas and Elec. Co., et al.* (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982) (reversing Board decision to investigate *sua sponte* the adequacy of quality assurance efforts); *So. Cal. Edison Co., et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-81-36, 14 NRC 691 (1981) (waiting on responses to questions before deciding whether the adequacy of the safe shutdown earthquake is a serious issue); *Cleveland Elec. Illuminating Co., et al.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-85-33, 22 NRC 442 (1985) (containment leak testing not a serious issue); *La. Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076 (1983) (declining to grant *sua sponte* review on decay heat removal issues); *Virginia Electric and Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-529, 9 NRC 153 (1979) (directing board to consider impacts of turbine missiles); *Fla. Power and Light Co.* (Turkey Point Plant, Unit Nos. 3 and 4), LBP-90-32, 32 NRC 81 (1990) (declining to grant *sua sponte* review of change in Mode reduction requirements, loss of ability to reduce modes, loss of coolant loop, and allowed outage time because they did not present "serious" safety concerns).

⁴⁵ Licensing boards have considered *sua sponte* review for issues involving availability of make-up water for cooling systems and omission of the ingestion pathway when evaluating public dose from radioactive releases — issues perhaps most accurately characterized as mixed safety/environmental issues rather than "pure" environmental issues. See, e.g., *Houston Lighting and Power Co., et al.* (South Texas Project, Units 1 and 2), LBP-85-8, 21 NRC 516 (1985) (declining *sua sponte* review of availability of makeup water, bioaccumulation of radionuclides, radionuclide deposition rates, and evacuation plans).

environmental impacts have been overlooked or ignored. The FEIS concludes, for example, that offsite transmission impacts on land use would be SMALL,⁴⁶ that impacts on terrestrial wildlife would be “relatively minor, and no additional mitigation would be warranted beyond that typically used by ITCTransmission,”⁴⁷ and that impacts on aquatic habitats within the offsite transmission corridor would be “temporary, easily mitigated, and minor, and no additional mitigation would be required.”⁴⁸ These types of impacts are not sufficiently serious to warrant *sua sponte* review.

Second, the circumstances are not “extraordinary.” This is not a matter where the NRC Staff has ignored an issue. Nor does it involve an egregious case, such as one where the NRC Staff’s review has been so deficient as to deprive the public of the disclosure NEPA generally affords. Instead, the issues involve the level of detail in the FEIS and the label given to categories of impacts in the FEIS. The NRC Staff recognized the need to consider the impacts in the transmission corridor and included a discussion of those impacts in the FEIS. In fact, the Board itself recognized that “each of the issues that comprise the subject matter of the contention was discussed in the ER, including the route of the transmission corridor and impacts from the corridor on historic and cultural resources, on endangered or threatened species, and on wetlands and vegetation.”⁴⁹ While the Board may have wished to see the impacts characterized differently, there is no doubt that the NRC Staff has taken into account the potential environmental impacts in the offsite transmission corridor as presently anticipated.

⁴⁶ FEIS at 4-8.

⁴⁷ *Id.* at 4-30.

⁴⁸ *Id.* at 4-53.

⁴⁹ FEIS Order at 21 (internal citations omitted). The Board also noted that the same issues were addressed in the DEIS.

Because there are no significant omissions or errors in the FEIS and the issues involved are of a type that do not pose serious health, safety, or environmental harms, the issues raised by the Intervenor in rejected Contention 23, and the Board in the FEIS Order, simply do not rise to the level of “serious” environmental issues. Nor are the circumstances involved extraordinary. *Sua sponte* review would be tantamount to “flyspecking” the FEIS to add minor details or nuances — an activity which the Commission has indicated is inappropriate for a licensing board.⁵⁰ Consequently *sua sponte* review is not warranted.

B. The Commission Has Already Spoken on This Issue

One of the Board’s concerns with the FEIS stems from the NRC Staff’s treatment of transmission line construction as a “preconstruction” activity and the NRC Staff’s assertion that it lacks regulatory authority over construction of the transmission corridor, which will be sited and built by an entity other than DTE. According to the Board, to avoid segmentation under NEPA, the FEIS must evaluate the environmental impact not only of the construction and operation of Unit 3 itself but of all “connected actions.” The Board is concerned that, even if the transmission corridor is a preconstruction activity and outside the NRC’s regulatory jurisdiction, the construction and maintenance of the transmission corridor “likely” qualifies as a connected action that must be analyzed in the FEIS. Both of the Board’s concerns have been addressed previously by the Commission.

First, while re-defining “construction” (as distinguished from “preconstruction”) in 2007, the Commission excluded the building of transmission lines from the definition of “construction.”⁵¹ The Commission specifically explained its approach does not constitute

⁵⁰ *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 71 (2001).

⁵¹ 10 C.F.R. § 50.10(a)(2)(vii).

“segmentation” that would run afoul of NEPA.⁵² The Commission noted that its redefinition of “construction” was not motivated by a desire to avoid compliance with NEPA, nor would it result in a single Federal action being divided into smaller, sequential Federal actions. Rather, the NRC’s redefinition reflects a reconsideration of the regulatory jurisdiction of the agency, and “properly divides what was considered a single Federal action into private action for which the NRC has no statutory basis for regulation” (e.g., transmission line construction), and “the Federal action (licensing of construction activities with a reasonable nexus to radiological health and safety or common defense and security, for which no other regulatory approach is acceptable) which will require compliance with NEPA.”⁵³ Thus, the Commission has explicitly determined that its treatment of transmission line impacts as “preconstruction” satisfies NEPA.⁵⁴

Second, the Commission has specifically directed, by regulation, that the impacts of “preconstruction” activities be addressed cumulatively with the impacts authorized by a combined license.⁵⁵ This is precisely the approach taken by the NRC Staff. The Fermi 3 FEIS explains that, while preconstruction activities, including offsite transmission lines, are outside the scope of NRC regulatory authority, they are nevertheless considered in the FEIS in the context of

⁵² 72 Fed. Reg. 57416, 57416 “Limited Work Authorizations for Nuclear Power Plants; Final Rule” (October 9, 2007); *see also id.* at 57427-57428 (explaining that the NRC’s approach to preconstruction is not segmentation under NEPA).

⁵³ *Id.* at 57418-57419.

⁵⁴ The term “preconstruction” is not limited to activities performed before construction; many preconstruction activities may and probably will be performed concurrently with construction. Interim Staff Guidance COL-ISG-004, “Interim Staff Guidance on the Definition of Construction and on Limited Work Authorizations,” at 9 (ADAMS Accession No. ML082970729).

⁵⁵ 10 C.F.R. § 51.45(c); *see also* COL-ISG-004 at 9 (discussing treatment of preconstruction impacts as part of the cumulative impacts analysis).

cumulative impacts.⁵⁶ Moreover, in its review of uncontested issues for the *Summer* COL, the Commission found the NRC Staff’s treatment of offsite transmission impacts — that is, cumulative impacts involving “preconstruction” activities — to be acceptable.⁵⁷ The NRC Staff approach in the Fermi 3 FEIS is directly comparable. Thus, the Commission not only has made clear, by rule, that its definitions of construction and preconstruction do not cause improper segmentation, but also has confirmed that the NRC Staff’s treatment of preconstruction impacts, as applied to a COL application, is acceptable.

Lastly, to the extent that the Board’s concern is that the FEIS treats offsite transmission as a “preconstruction” activity evaluated as a cumulative impact, rather than as a connected action, the concern elevates form over substance. It matters not whether the impacts are considered “cumulative” or “connected” so long as they are addressed in the FEIS. Indeed, as the Board recognized and as discussed further below, the impacts from offsite transmission corridor construction are addressed throughout the FEIS.

C. The FEIS Satisfies NEPA

The adequacy of the Fermi 3 FEIS is subject to a “rule of reason.” The FEIS need not include all theoretically possible environmental effects and the discussion of the impacts need not be encyclopedic in scope or detail.⁵⁸ Nor must the NRC have complete information on

⁵⁶ FEIS at 1-6 to 1-7, E-41, and E-56. Because the NRC considered the activities at the Fermi site and those in the transmission corridor together, the FEIS eliminates segmentation concerns.

⁵⁷ *South Carolina Electric & Gas Co. and Santee Cooper* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-09, __ NRC __ (2012).

⁵⁸ *See, e.g., San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1300-01 (D.C. Cir. 1984), *rehearing en banc granted on other grounds*, 760 F.2d 1320 (D.C. Cir. 1985); *see also* 40 C.F.R. § 1502.2(a) (“Environmental impact statements shall be analytic rather than encyclopedic.”).

all issues before proceeding.⁵⁹ It is enough that the NRC Staff takes a “hard look” at the likely impacts of offsite transmission corridor development and “comes to grips with all important considerations.”⁶⁰ Whether transmission impacts are characterized as preconstruction, connected actions, or cumulative impacts, and irrespective of which entity seeks the necessary permits or approvals related to construction and operation of offsite transmission lines, the FEIS fully considers the transmission corridor impacts based on presently available information, as required by NEPA and the NRC’s implementing regulations. Any dispute over the terminology used in the FEIS or the need for more detail is immaterial since the FEIS, as written, complies with NEPA.

The FEIS discusses transmission impacts in a consistent and logical fashion in order to ensure comprehensive treatment. The FEIS framework follows the format of the NRC’s Standard Review Plan as well as FEISs in other COL proceedings.⁶¹ For example, the approach to transmission corridors in the FEIS tracks the NRC’s Environmental Standard Review Plan, NUREG-1555, at § 4.1.2, Revision 1 (July 2007), which provides:

In some cases transmission lines may be constructed and operated by an entity other than the applicant. In such cases, impact information may be

⁵⁹ *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 & 2), LBP-78-26, 8 NRC 102, 141 (1978).

⁶⁰ *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 811 (2005).

⁶¹ *See generally* NUREG-1555, “Environmental Standard Review Plan”; *see also* NUREG-1939, “Final Environmental Impact Statement for Combined Licenses for Virgil C. Summer Nuclear Station Units 2 and 3.” Following the convention used for other impacts, the FEIS identifies the affected environment in Chapter 2, the proposed activity in Chapter 3, construction impacts in Chapter 4, operational impacts in Chapter 5, and the cumulative impacts in Chapter 7.

limited and the reviewer should proceed with the assessment using the information that can be obtained.⁶²

This guidance also follows the approach described in the Council on Environmental Quality's NEPA regulations⁶³ and cases addressing circumstances where information is not complete or available to an agency.⁶⁴

In the end, the Fermi 3 FEIS meets the “hard look” standard by evaluating the likely effects of the offsite transmission corridor based on the information that could reasonably be obtained from *ITC Transmission*. There is therefore no need to “flyspeck” the FEIS or to add minor details or nuances to the analysis.⁶⁵ Because the FEIS as written satisfies NEPA, there would be no value in granting *sua sponte* review.

⁶² See also NUREG-1555, § 5.1.2, Revision 1 (July 2007) (same); NUREG-1555, § 9.4.3, Revision 1 (July 2007) (same).

⁶³ See 40 C.F.R. § 1502.22 (where there is “incomplete or unavailable information,” an EIS may be “based upon theoretical approaches or research methods generally accepted in the scientific community”).

⁶⁴ See, e.g., *Crouse Corp. v. Interstate Commerce Commission*, 781 F.2d 1176, 1193-96 (6th Cir. 1986) (ruling that the ICC had justified the limited scope of its analysis on the grounds that “the lack of final design and engineering plans made it impossible to conduct an in-depth analysis”); *Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976) (explaining that the scope of an EIS “requires the weighing of a number of relevant factors, including the extent of the interrelationship among proposed actions and practical considerations of feasibility”); *Env'tl. Prot. Info. Ctr. v. Blackwell*, 389 F.Supp.2d 1174, 1188 (N.D. Cal. 2004) (noting, in cases where information is not complete or is unavailable to an agency, that the agency need only make clear that information is lacking). See also *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002) (denying a NEPA “segmentation” contention because it involved inchoate plans of the licensee and explaining that, to bring NEPA into play, a possible future action must at least constitute a “proposal” pending before the agency). There is no proposal relating to the offsite transmission corridor currently pending before the NRC or another agency.

⁶⁵ *Hydro Resources, Inc.*, CLI-01-04, 53 NRC at 71. It is not the role of the Board to address as a technical/environmental review body every potential problem with an FEIS.

CONCLUSIONS

For all of the above reasons, the Board should not exercise *sua sponte* review of the issues raised in rejected Contention 23.

Respectfully submitted,

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Dated at Washington, District of Columbia
this 30th day of May 2013

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
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(Fermi Nuclear Power Plant, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S BRIEF OPPOSING SUA SPONTE REVIEW OF ENVIRONMENTAL IMPACTS IN THE OFFSITE TRANSMISSION CORRIDOR” and “AFFIDAVIT OF PETER SMITH ON TRANSMISSION CORRIDOR TOPICS” in the above captioned proceeding have been served via the Electronic Information Exchange.

Respectfully submitted,

/s/ signed electronically by
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COUNSEL FOR DTE ELECTRIC
COMPANY

Dated at Washington, District of Columbia
this 30th day of May 2013