

May 30, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
DTE ELECTRIC COMPANY) Docket No. 52-033-COL
(Fermi Nuclear Power Plant, Unit 3))

DTE ELECTRIC'S REBUTTAL STATEMENT OF POSITION ON CONTENTION 15

David A. Repka
Tyson R. Smith
Noelle R. Formosa
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Bruce R. Maters
Jon P. Christinidis
DTE Electric Company
One Energy Plaza
Detroit, Michigan 48226

COUNSEL FOR DTE ELECTRIC
COMPANY

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. APPLICANT WITNESSES	2
III. DISCUSSION	3
A. DTE Has Demonstrated Its Commitment to Quality Measures Throughout the Fermi 3 Project.....	3
B. The Intervenors, Not DTE, Are Confused About the Fermi 3 QA Program	5
C. There Are No Ongoing QA Issues.....	7
D. Conclusions on Contentions 15A and 15B	9
IV. CONCLUSIONS	10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
DTE ELECTRIC COMPANY) Docket No. 52-033-COL
(Fermi Nuclear Power Plant, Unit 3))

**DTE ELECTRIC’S REBUTTAL
STATEMENT OF POSITION ON CONTENTION 15**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.1207(a)(1) and the Licensing Board’s Order (Modifying the Schedule), dated March 29, 2013, DTE Electric Company (“DTE”) hereby submits this Rebuttal Statement of Position on Contention 15. This Rebuttal Statement of Position is supported by rebuttal testimony from Peter Smith, Stanley Stasek, Ronald Sacco, and Steven Thomas (“DTE Rebuttal Testimony”) (Exh. DTE000101) and by the exhibits submitted concurrently.

For the reasons set forth below, the Intervenors have utterly failed to identify any deficiencies in the quality measures applied during the site investigation, COL Application development, or COL Application review phases of the Fermi 3 project. The Intervenors’ arguments and testimony contain wholly unsubstantiated claims regarding DTE management’s commitment to quality measures. The Intervenors and their witness distort the record by selectively quoting documents out of context. Based on the arguments and examples cited in their testimony and position statement,¹ the Intervenors’ witness has not demonstrated even a

¹ “Testimony of Arnold Gundersen Supporting of Intervenors Contention 15: DTE COLA Lacks Statutorily Required Cohesive QA Program,” dated April 30, 2013 (“Gundersen Testimony”); “Testimony of Arnold Gundersen Supporting of Intervenors Contention 15: DTE COLA Lacks Statutorily Required Cohesive QA Program; Fermi 3 Expert Report

passable familiarity (much less a working knowledge) of the NRC's quality assurance regulations or the programs and procedures that have been applied to safety-related activities on the Fermi 3 project.

In the end, the record contains ample evidence to support a finding that there is reasonable assurance of the quality of the safety-related information in the COL Application, including information that is based on tests, investigations, or other safety-related activities conducted by DTE's contractor, Black & Veatch ("B&V"). DTE also has demonstrated its commitment to implementation of a Quality Assurance ("QA") program that complies with applicable NRC regulations and guidance. In contrast, the Intervenor's position is based on little more than a long-since-resolved, low-level enforcement action, augmented with unfounded speculation or mischaracterization of the DTE program, and spiced up with broad hyperbole. The Intervenor has failed to demonstrate any issue of material significance with respect to the quality of safety-related information in the COL Application or the implementation of the QA program for the Fermi 3 project. Contention 15 should be resolved in favor of DTE.

II. APPLICANT WITNESSES

DTE's Written Rebuttal Testimony on Contention 15 is presented by Mr. Peter Smith, Mr. Stanley Stasek, Mr. Ronald Sacco, and Mr. Steven Thomas. All four individuals have extensive, recent experience with Appendix B QA programs and in-depth knowledge of the quality measures applied during the Fermi 3 project. Through the testimony and supporting

Based Upon Proprietary Information," dated April 30, 2013 ("Gundersen Proprietary Testimony"). The Intervenor provided DTE's counsel with a copy of the proprietary testimony via e-mail. However, DTE was not served a copy of the proprietary testimony through the Electronic Information Exchange, as required by NRC regulations. Nevertheless, DTE has elected to respond to the claims, at this time, in order to ensure the availability of a comprehensive record. DTE is not waiving its right to address the proprietary testimony through a motion in limine.

exhibits, DTE's expert witnesses respond to the issues raised by the Intervenors' witness, Mr. Gundersen, and demonstrate that appropriate quality measures were applied to the development of safety-significant information in the COL Application, that there has been no breakdown in the QA program, and that the QAPD provided in the COL Application meets NRC's regulatory requirements.

III. DISCUSSION

A. DTE Has Demonstrated Its Commitment to Quality Measures Throughout the Fermi 3 Project

Mr. Gundersen alleges that "DTE knowingly and deliberately minimized its corporate commitment to quality oversight."² But, he provides no basis for this assertion, which is contradicted by the record. Since the beginning of the Fermi 3 project, and prior to submittal of the COL Application, DTE has been committed to implementing quality assurance procedures for all aspects of work that are important to the safety of Fermi 3. In both the pre-application phase and the application review phase of the project, DTE has ensured, through systematic processes, that suppliers of safety-related equipment or services have met the applicable requirements of Appendix B. DTE knowingly and deliberately contracted with B&V to perform specific services under the B&V Appendix B QA Program. DTE took responsibility for the program, delegated the function to a qualified vendor, and exercised organizational oversight of that work. And, DTE subsequently implemented the ND QAPD before COL Application chapters were accepted from B&V and before the COL Application was submitted to the NRC. DTE did not, in any sense, "minimize its corporate commitment to quality oversight."³

² Gundersen Testimony at ¶25.

³ To the extent the Intervenors are disparaging DTE's decision to delegate QA activities to B&V, they are challenging the regulations that specifically allow such an approach.

At the time of the COL Application, DTE also implemented the Fermi 3 QAPD. The Fermi 3 QAPD complies with Appendix B, as well as NQA-1, and is consistent with the NEI template for an acceptable COL application QAPD. The Fermi 3 QAPD has been reviewed and accepted by the NRC Staff. The Intervenor have not shown (or even attempted to show) any current deficiency in that program.

The Intervenor claim that in February 2008 DTE management “did not understand its organizational responsibilities concerning quality assurance oversight.”⁴ But, the supposed evidence provided to support that claim falls far short.

- In ¶35, Mr. Gundersen references an email sent by a licensing contractor, used by B&V, who was helping to prepare the content for Chapter 17 of the FSAR.⁵ The email reflects nothing more than the contractor’s efforts to gather information to support development of the text of the COL Application.⁶
- In ¶39, Mr. Gundersen highlights an email that he claims shows that DTE “had no intention of hiring QA professionals.” But, the email shows no such thing. The email merely discusses the history of the Fermi 3 QA program development, including DTE’s consideration of broader use of Owner’s Engineer resources.⁷
- In ¶40, Mr. Gundersen describes an email that, he says, shows that DTE did not have a clear understanding of its organizational responsibilities. But, in fact, the email reflects appropriate and timely efforts by DTE’s newly-hired QA Manager to understand the B&V processes and procedures being applied to the Fermi 3 project. This information would help inform the manner in which he would perform his duties as the QA Manager.⁸

⁴ Intervenor’s Statement of Position at 14.

⁵ As discussed in ¶70 of DTE’s direct testimony, FSAR Chapter 17 addresses quality assurance.

⁶ DTE Rebuttal Testimony at ¶34.

⁷ *Id.* at ¶36.

⁸ *Id.* at ¶37.

None of these examples, when considered in their historical and regulatory context, suggest a failure by DTE to “understand its organizational responsibilities.” Nor do they remotely reflect the “organizational chaos” alleged by the Intervenors.⁹ The Intervenors’ claims are nothing more than distortions and unsubstantiated allegations that provide no support for Contention 15.

B. The Intervenors, Not DTE, Are Confused About the Fermi 3 QA Program

Mr. Gundersen claims that “confusion and lack of organizational control reigned” within DTE “for years prior to the COLA submittal and to this day.”¹⁰ But, this claim has absolutely no basis in the record. If anything, it is Mr. Gundersen and the Intervenors who are confused. For example, Mr. Gundersen wrongly claims that DTE relied on the Fermi 2 QA program for geotechnical work without qualifying Fermi 2 as an approved vendor.¹¹ Geotechnical work was subject to the B&V Appendix B QA program.¹² Only Fermi 2 site procedures (*e.g.*, site access, control of contractors), not the Fermi 2 QA program, were applied to geotechnical work performed at the Fermi site.¹³ Mr. Gundersen also wrongly claims that B&V attempted to “backfill” certifications of geotechnical contractors after work had begun. Inexplicably, the only support cited for the allegation is a “pre-work surveillance” by B&V of a geotechnical contractor, GEOVision, used to qualify GEOVision under the B&V QA program.¹⁴

⁹ Gundersen Testimony at ¶41; Intervenors’ Statement of Position at 14.

¹⁰ Gundersen Testimony at ¶13.

¹¹ *Id.* at ¶¶18-19.

¹² DTE Rebuttal Testimony at ¶¶14, 20.

¹³ *Id.* at ¶¶20, 22.

¹⁴ Gundersen Testimony at ¶20.

These fundamental errors and mischaracterizations indicate an incomplete (at best) understanding of the issues involved Contention 15.

In another example, Mr. Gundersen complains (in ¶23) that he was unable to find a reference to the “New Plant Oversight Manager” position in the COL Application. But, as DTE explained in a summary disposition motion months ago, and again in DTE’s direct testimony at ¶85, the title of the person responsible for the QA program has evolved during the course of the project. The Nuclear Development QA Manager title was used while the ND QAPD was in effect. The duties of the Nuclear Development QA Manager were taken over by the New Plant Oversight Manager in Revision 0 of the Fermi 3 QAPD, and that position became the Director, Quality Management in Revision 1 of the Fermi 3 QAPD. All three positions have the same responsibilities. Mr. Gundersen’s complaint based on his own inadequate review of the information presented to him cannot support Contention 15.

Mr. Gundersen’s testimony also reflects his own confusion regarding application of the NEI QAPD template. Mr. Gundersen asserts in ¶24 (page 22) that DTE should have notified the NRC that it was deviating from the NEI template when it delegated QA activities to B&V for site investigation work. But, delegation is specifically addressed in the NEI QAPD template in Part 2, Section 2.2 (Exh. DTE000091 at 12).¹⁵ There was therefore no “deviation” from the template. In ¶9, Mr. Gundersen claims that the supposed deviation from the NEI template “was memorialized” in the NOV issued to DTE. But, from a regulatory perspective, the requirement is for a QA program that meets Appendix B.¹⁶ Use of the NEI QAPD template is a

¹⁵ Delegation is also explicitly permitted in 10 C.F.R. Part 50, Appendix B, Criterion I.

¹⁶ DTE Rebuttal Testimony at ¶14.

tool to promote consistency and efficiency — it is not, in and of itself, a requirement. So, the NOV issued by the NRC reflects no such deviation from the NEI template.

Mr. Gundersen also wrongly asserts that DTE failed to notify the NRC of its intent to delegate QA functions to B&V. Contrary to his claim that there is “no record” of these interactions,¹⁷ the NRC audit of pre-application subsurface activities, dated August 8, 2007 (Exh. DTE000084), specifically notes (at 3) that B&V quality assurance measures were being applied to the work. DTE also informed the NRC in a letter, dated May 31, 2007, that the B&V Quality Assurance Program was being applied to the geotechnical investigation work scope.¹⁸

C. There Are No Ongoing QA Issues

The Intervenors claim that “the problems that [DTE] is currently experiencing with its faulty foundation analysis” are “directly attributable” to decisions made at the beginning of the Fermi 3 project.¹⁹ Mr. Gundersen also claims that “early QA problems are the root cause of the current site characterization issues that continue to plague” Fermi 3.²⁰ But, these assertions are invented out of whole cloth. Mr. Gundersen does not describe the supposedly “faulty” foundation analysis or link it to any information gathered during the site investigation phase. Nor does he identify the “early QA problems” or describe what effect the “early QA problems” supposedly have today.

As DTE’s expert explains (at ¶18), DTE is continuing to work on a Soil-Structure Interaction (“SSI”) analysis, but that work is unrelated to the site investigation for Fermi 3. In

¹⁷ Gundersen Proprietary Testimony at ¶1.

¹⁸ Letter from D. Gipson, DTE, to NRC, NRC3-07-0002, dated May 31, 2007 (Exh. DTE000107).

¹⁹ Intervenors’ Statement of Position at 14.

²⁰ Gundersen Testimony at ¶14.

Revision 7 of the Design Control Document (“DCD”) for the ESBWR, GE added a new specification relating to engineered backfill, which triggered the need for additional analysis by COL Applicants referencing the ESBWR design, including DTE.²¹ That SSI analysis is ongoing. However, the SSI analysis (and the need for the analysis) had nothing to do with data gathered during the site investigation phase. Nor does it stem from any QA problems or concerns at the Fermi 3 project. There is simply no basis for the Intervenor’s unsubstantiated (and, in fact, imagined) claim of a connection between QA and the SSI analysis.

Mr. Gundersen also repeatedly charges DTE with relying on a “self-executing” QA program, but never explains what that means.²² Review of one document that Mr. Gundersen cites as evidence of DTE relying on a “self-executing” QA program reveals selective editing by the Intervenor’s witness and mischaracterization of the document’s content.²³ The text that Mr. Gundersen references describes alternatives that DTE did not adopt. In the section entitled “Description of Solution” (*i.e.*, the alternative actually adopted), DTE explains that it will conduct the COL Application work production acceptance review in accordance with Standard Work Instructions (“SWIs”). DTE then did just that. DTE’s Nuclear Development staff reviewed individual FSAR chapters or sections as prescribed by SWI 03-001-001-0529, “COLA Section and Chapter Review and Acceptance Process” (Exh. DTE000050).²⁴ DTE

²¹ Revision 7 was submitted in March 2010 — nearly three years after the site investigation work.

²² Indeed, the Intervenor themselves do not seem to understand what they mean by a self-executing QA program. *See* Intervenor Statement of Position at 15 (discussing the Intervenor’s claims regarding a supposedly “self-executing” QA program – whatever that really means”).

²³ The Intervenor did not introduce this document as an exhibit. DTE will refer to this as Exh. DTE000106.

²⁴ DTE Direct Testimony at ¶54.

reviewed the application work product against relevant regulatory guidance, information provided by DTE to B&V, and the Reference COL Application (R-COLA), as applicable. Comments were documented, provided to B&V for formal resolution, and resolved in accordance with procedures.

The other examples of alleged QA issues offered by the Intervenors do not indicate any “serial violation” of QA requirements or suggest any fundamental breakdown of the QA program. To the contrary, Mr. Gundersen’s examples relate to issues that were identified by DTE or B&V and entered into their respective Corrective Action Programs for resolution. Far from demonstrating an expectation of a “self-executing” QA program, the examples offered by the Intervenors highlight ongoing efforts to drive continuous improvement in performance. The examples — as well as the numerous exhibits previously introduced by DTE — actually demonstrate the effective functioning of the Fermi 3 QA program through verification activities (*e.g.*, self-assessments, performance trending, audits, surveillances, vendor reviews, and third party audits) and the Corrective Action Program.²⁵ Mr. Gundersen’s examples also are notably lacking any indication of an error in safety-related information gathered during the site investigation phase or sent to the NRC, much less a QA breakdown.²⁶ Altogether, the record includes ample examples of DTE taking proactive steps to improve the effectiveness of its programs as part of its continual improvement efforts.

D. Conclusions on Contentions 15A and 15B

The Intervenors have failed completely to demonstrate any safety-significant issue related to either the pre-application site investigation work or subsequent implementation

²⁵ DTE Rebuttal Testimony at ¶42.

²⁶ *Id.*

of the Fermi 3 QAPD. As the record and testimony demonstrate, at the outset of the Fermi 3 COL Application development project in March 2007, DTE contractually delegated to B&V the responsibility for establishing and executing a QA program for the B&V scope of work on the project. DTE retained overall responsibility for the program. Moreover, DTE established an Appendix B program under the ND QAPD and developed procedures for review and acceptance of COL Application work product. The ND QAPD and implementing procedures provided additional assurance of quality beyond DTE's commercial contract oversight.

The testimony and exhibits also demonstrate that DTE has developed and implemented, and will continue to implement, an effective QA program that meets all relevant requirements, standards, and NRC guidance. DTE has demonstrated its commitment to QA from the start of the project by selecting a contractor with a proven Appendix B QA program, requiring by contract that work be performed under that program, establishing its own Appendix B QA program prior to accepting any information for use in the COL Application, and implementing the applicable QAPD program throughout ongoing COL-related work. DTE continues to implement the Fermi 3 QAPD through procedures based on the QAPD and NRC requirements.

IV. CONCLUSIONS

DTE has demonstrated its commitment to QA throughout the Fermi 3 project. All safety-related information was developed under an Appendix B QA program that met NRC requirements. There has been no pervasive breakdown in quality assurance and no issues of material safety significance have been identified. There is reasonable assurance that the Fermi 3 QA program meets NRC requirements and has been, and will be, implemented in accordance with the QAPD throughout the design, construction, and operations of Fermi 3. Accordingly, the Board should resolve Contentions 15A and 15B in favor of DTE.

Respectfully submitted,

/s/ signed electronically by

David A. Repka
Tyson R. Smith
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Bruce R. Maters
DTE Electric Company
One Energy Plaza
Detroit, Michigan 48226

COUNSEL FOR DTE ELECTRIC
COMPANY

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:)
DTE ELECTRIC COMPANY) Docket No. 52-033-COL
(Fermi Nuclear Power Plant, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of “DTE ELECTRIC’S REBUTTAL STATEMENT OF POSITION ON CONTENTION 15” and “WRITTEN REBUTTAL TESTIMONY OF DTE ELECTRIC WITNESSES PETER SMITH, STANLEY STASEK, RONALD SACCO AND STEVEN THOMAS ON CONTENTION 15” in the above captioned proceeding have been served via the Electronic Information Exchange.

Respectfully submitted,

/s/ signed electronically by
Tyson R. Smith
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

COUNSEL FOR DTE ELECTRIC
COMPANY

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