

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Commission**

In the Matter of:)	Docket No. 52-033-COL
The Detroit Edison Company)	June 25, 2014
(Fermi Nuclear Power Plant, Unit 3))	

* * * * *

**DECLARATION OF INTERVENORS' COUNSEL IN
SUPPORT OF INTERVENORS' MOTION FOR
RECUSAL OF COMMISSIONER MAGWOOD
FROM PARTICIPATING IN DELIBERATIONS
UPON PETITION FOR REVIEW OF LBP-14-07**

Now comes Terry J. Lodge, Esq., Declarant herein, who makes the following statements under penalties of perjury:

1. He is an attorney-at-law licensed by the Supreme Court of Ohio since 1979.
2. He represents Intervenors Beyond Nuclear, *et al.*¹ (hereinafter "Intervenors") in this proceeding.
3. Pending before the Commission is a "Petition for Review" which the undersigned researched, wrote and filed in this proceeding on June 17, 2014.
4. Prior to filing the instant Motion of which this Declaration is a part, Declarant conducted a diligent investigation and determined the following matters to be true as he verily

¹In addition to Beyond Nuclear, the Intervenors include: Citizens for Alternatives to Chemical Contamination, Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club (Michigan Chapter), Keith Gunter, Edward McArdle, Henry Newnan, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman.

believes:

a) Commissioner William Magwood should permanently recuse himself from any participation in the docketing, deliberations over, and determination of any issues raised by “Intervenors’ Petition for Review of LBP 14-07 (Ruling for Applicant on Quality Assurance),” which arises from the ongoing Fermi 3 Combined Operating License (COL) proceeding, because he has an irreparable conflicting professional interest in the matter of the NRC’s issuance of a Combined Operating License for the DTE Electric Company’s Fermi 3 proposed nuclear power plant.

b) On June 17, 2014, Intervenors filed a Petition for Review by the whole Commission of an adjudication order issued by the Atomic Safety and Licensing Board presiding over the Fermi 3 Combined Operating License proceeding, which is an adversarial litigation. The review is an appeal to the full Nuclear Regulatory Commission of the ASLB’s order as to Contention 15, which challenged quality assurance (QA) within the planning effort for proposed Fermi 3 nuclear power plant. The ASLB ruled in favor of DTE Energy, the sponsoring utility. Contention 15 is novel and involves interpretation of NRC regulations governing quality standards directly related to the planning and construction of the proposed Fermi 3.

c) Fermi 3 is the prototype Economic Simplified Boiling Water Design (ESBWR) reactor in the global nuclear industry. Approval of the Fermi 3 COL is being watched in several countries where the General Electric-Hitachi ESBWR design is being considered. The OECD-NEA is promoting the design.²

²A search of OECD-NEA’s website turns up over a dozen mentions in agency literature of the ESBWR. <http://www.oecd-nea.org/globalsearch/search.php?q=ESBWR&go-button=>

d) Commissioner Magwood holds employment outside the Commission which has compromised his ability to function as an independent regulator of nuclear safety, namely, the position of Director-General with the Organisation for Economic Co-Operation and Development's ("OECD's") Nuclear Energy Agency ("NEA"). The NEA actively promotes "the development of the production and uses of nuclear energy;" and its policies are set by member governments. "The objective of the Agency is to assist its member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes."³

e) Some of OECD's member governments own or sponsor U.S. nuclear licensees and applicants.⁴ Commissioner Magwood, who has been portrayed in official literature of the OECD as the NEA's new Director-General, is now affiliated with an entity with a mandate to promote nuclear energy and the economic interests of its members. His NEA association directly conflicts with the terms of the Energy Reorganization Act of 1974 which established the NRC and dictates that safety is the Commission's overriding concern, while leaving promotion to the U.S. Department of Energy ("DOE").

5. Commissioner Magwood's affiliation with the OECD-NEA presents a classic actual conflict of interest, where as NRC Commissioner he would be in a role where he could vote to

³"2013 NEA Annual Report," p.2, <http://www.oecd-nea.org/pub/activities/ar2013/ar2013.pdf>

⁴Statute of the OECD Nuclear Energy Agency, Articles 1 and 8 (as amended on 13 July 1995), <https://www.oecd-nea.org/nea/statute.html>. Countries that own or sponsor U.S. nuclear licensees or applicants include, for example, France (MOX Fuel Fabrication Facility through AREVA; Nine Mile Point Units 1 and 2, Calvert Cliffs Units 1 and 2, and Ginna through Electricité de France) and the Netherlands (Louisiana Enrichment Services through URENCO). NEA also promotes the financial interests of many private nuclear companies doing business in the U.S. and other countries.

deny Intervenors' Petition for Review and hasten the issuance of an NRC Combined Operating License for Fermi 3. By voting to deny the Petition for Review, he would be clearing the way for the approval of the prototype ESBWR design and the promotion of the ESBWR to several interested international customers.

6. At a minimum, Commissioner Magwood's affiliation with OECD-NEA amounts to the appearance of a conflict of interest and his participation from this point forward in the Fermi 3 proceeding will undermine the public perception of the impartiality of the Nuclear Regulatory Commission's adjudicatory determinations.

7. Commissioner Magwood simply cannot dispel the significant doubt that justice would be done, absent his recusal from the determination of Intervenors' Petition for Review.

8. Further Declarant saith naught.

June 25, 2014

/s/ Terry J. Lodge
Terry J. Lodge (OH #0029271)
316 N. Michigan St., Ste. 520
Toledo, OH 43604-5627
(419) 255-7552
Fax (419) 255-7552
tjlodge50@yahoo.com
Counsel for Intervenors

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Commission**

In the Matter of) Docket No. 52-033
The Detroit Edison Company) June 25, 2014
(Fermi Nuclear Power Plant, Unit 3)
)

* * * * *

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “DECLARATION OF INTERVENORS’ COUNSEL IN SUPPORT OF INTERVENORS’ MOTION FOR RECUSAL OF COMMISSIONER MAGWOOD FROM PARTICIPATING IN DELIBERATIONS ON PETITION FOR REVIEW OF LBP-14-07” have been served by me upon the following persons via Electronic Information Exchange this 25th day of June, 2014:

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](mailto:OCAAmail@nrc.gov)

Michael F. Kennedy
Administrative Judge
Atomic Safety and Licensing
Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory

Commission
Washington, DC 20555-0001
E-mail: Michael.Kennedy@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

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

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

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

/s/ Terry J. Lodge
Terry J. Lodge (OH #0029271)
316 N. Michigan St., Ste. 520
Toledo, OH 43604-5627
(419) 255-7552
Fax (419) 255-7552
Tjlodge50@yahoo.com
Counsel for Intervenors