UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

APPLICANT'S ANSWER OPPOSING PETITION FOR REVIEW OF LBP-14-07

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July 14, 2014

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July 14, 2014

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INTRODUCTION

In accordance with 10 C.F.R. § 2.341(b)(3), DTE Electric Company ("DTE") hereby answers the "Intervenors' Petition for Review of LBP-14-07 (Ruling for Applicant on Quality Assurance)," dated June 17, 2014 ("Petition for Review").[1] In LBP-14-07, dated May 23, 2014, the Atomic Safety and Licensing Board ("Board") issued a partial initial decision ("PID") on Intervenors' Contention 15, which challenged the adequacy of the quality assurance ("QA") program developed and implemented by DTE. The Board in the PID found that DTE met its burden of proof and resolved Contention 15 in DTE's favor.

DTE opposes the Petition for Review. The Petition for Review does not conform to NRC regulations and, in any event, fails to demonstrate a substantial question for review with respect to any of the considerations identified in 10 C.F.R. § 2.341(b)(4). The Intervenors have failed to identify any clear error of fact, error of law, procedural error, or abuse of discretion by the Board, or any other question or consideration that merits review.

[1] The Intervenors are Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronardo, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman.

STANDARD FOR REVIEW

Under 10 C.F.R. § 2.341(b)(4), the Commission may, in its discretion, grant a petition for review, giving due weight to the existence of a "substantial question" with respect to the following considerations: (1) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (2) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (3) a substantial and important question of law, policy or discretion has been raised; (4) the conduct of the proceeding involved a prejudicial procedural error; or (5) any other consideration which the Commission may deem to be in the public interest.[2]

DISCUSSION

A. The Petition for Review Does Not Conform to NRC Requirements

The Petition for Review does not conform to the requirements of 10 C.F.R. § 2.341(b), one purpose of which is to focus the parties' arguments on significant issues.[3] The Petition here is a sprawling rehash of issues that were raised and rejected by the Board. The Petition for Review exceeds the 25-page limit in 10 C.F.R. § 2.341(b)(2) and fails to clearly explain a basis for Commission review. Intervenors do not address with specificity any of the considerations set forth in Section 2.341(b)(4), submitting only that "there is a substantial question raised by them respecting each of these considerations." Pet. at 2. The Petition for Review fails to provide the concise statement required by Section 2.341(b)(2) and fails to clearly articulate pertinent grounds on which the Commission should exercise its discretionary review.

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[2] 10 C.F.R. § 2.341(b)(4)(i)-(v); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Facility), CLI-03-8, 58 NRC 11, 17 (2003).

[3] Page limits, for example, "are intended to encourage parties to make their strongest arguments clearly and concisely." *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-01-4, 53 NRC 31, 46 (2001).

The Petition also is contrary to 10 C.F.R. § 2.341(b)(5). To the extent the Intervenors argue that there was a *de facto* exemption from NRC requirements (Pet. at 3, 24-26), the Petition for Review raises a matter that could have been, but was not, raised with the Board.[4] The Intervenors never cited Section 50.12 or raised a *de facto* exemption argument prior to the Petition for Review. The Commission should refuse to consider the untimely argument raised for the first time on appeal.[5]

B. The Petition For Review Does Not Demonstrate a Substantial Question for Review

Intervenors' various arguments in support of Commission review are without merit. The Board considered evidence and took written and oral testimony in reaching its carefully rendered findings of fact on Contention 15. The Board's decision is consistent with applicable NRC requirements and precedent and has extensive support in the record.

1. Exclusion of Certain Exhibits Was Not Prejudicial Procedural Error

In arguing that the Board erred in not admitting certain exhibits (Pet. at 3-6), the Intervenors ignore the most fundamental aspect of the Board's decision: despite ample opportunities (and multiple warnings from the Board), the Intervenors did not meet the deadline to file their exhibits.[6] Tellingly, the Intervenors never claim otherwise. Had the Intervenors

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4 *See* 10 C.F.R. § 2.341(b)(5) (The Commission will not grant a petition for review to the extent that it relies on matters that could have been, but were not, raised previously before the Board).

5 *Tennessee Valley Authority* (Hartsville Nuclear Plant, Units 1A, 2A, 1B & 2B), ALAB-463, 7 NRC 341, 348 (1978).

6 *See* Order (Granting Intervenors' Motions for Extension of Time, Requesting List of Objections from the NRC Staff, and Explaining Board Procedure in the Event of a Continued Government Shutdown), dated October 3, 2013, at 2 (directing that Intervenors file all exhibits by close of business Friday, October 4, 2013, and warning that "[n]o additional extensions will be granted").

simply followed NRC procedural rules or met either of the Board's deadlines, the exhibits presumably would have been admitted.

In any event, the Board's actions are consistent with governing regulations and precedent. When excluding the Intervenors' exhibits the Board was acting within its authority to regulate the conduct of the proceeding.[7] Procedural rulings, such as decisions to exclude evidence, are entitled to substantial deference.[8] The Intervenors have cited no "established law" that the Board "departed from" or acted "contrary to" when it excluded late-filed evidence. The Intervenors' argument regarding a lack of prejudice to DTE or the NRC Staff (Pet. at 6) is irrelevant — prejudice to other parties (or lack thereof) is not the standard for admitting exhibits late or for reversing a Board's procedural ruling. Put simply, exclusion of the exhibits was the consequence of the Intervenors' inability to meet filing deadlines, and there was no error in the Board choosing to enforce clear procedural requirements.

Furthermore, contrary to the suggestion in the Petition for Review, as a result of the procedural ruling the Board did not overlook or ignore an important issue of fact or a safety concern associated with the excluded exhibits. None of the excluded exhibits were themselves critical to understanding the Intervenors' arguments, nor did the exhibits contain facts that were essential to a complete record. The exhibits on their face do not support the inferences claimed, and do not establish a lack of quality of information in the Fermi 3 license application.[9] In

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7 *See, e.g.*, 10 C.F.R. § 2.319(d).

8 *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB–212, 7 AEC 986, 991 (1974); *Consumers Power Co.* (Midland Plant, Units 1 & 2), ALAB-541, 9 NRC 436, 438 (1979).

9 DTE addressed each of the issues raised by the Intervenors' witness that are discussed in the Petition at 12-19, noting that in each case the Intervenors' witness cited to text out of context or offered the exhibit for an unsupported proposition. *See, e.g.*, DTE Written Rebuttal Testimony (Exh. DTE000101) at A20-A22 (alleged use of unapproved

addition, the Board reviewed the parties' filings and the exhibits in question and determined that the late-filed exhibits were not essential to the Board's evaluation of the evidentiary record.[10] The Board correctly concluded that the exhibits were cumulative or lacking in probative value and would not change the result with respect to Contention 15. The Intervenors have not demonstrated otherwise.

2. The Decision is Based on a Sound Record: There Was No Clearly Erroneous Finding of Fact or Finding of Fact in Conflict With Precedent

As admitted by the Board, Contention 15 was divided into two parts: Contentions 15A and 15B. Contention 15A alleged that DTE lacked an adequate Fermi 3 QA program for the conduct of safety-related activities during the pre-application period to support the Combined License Application ("COLA").[11] In particular, the Intervenors alleged that DTE was required to have its own in-house QA program that satisfied Appendix B to 10 C.F.R. Part 50 during the pre-application period and apply that program to all safety-related COLA activities, including those performed by DTE's COLA contractor, Black & Veatch ("B&V").[12] Contention 15B claimed that, in light of QA violations identified by the NRC Staff in 2010 and an alleged general lack of commitment to compliance with Appendix B requirements, the NRC could not make the safety

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vendors); A24, A35 (alleged problems with organizational chart); A26, A33 (supposed "self-executing" QA program); A28 (issues with timing of technology selection); A34, A37 (alleged lack of awareness of QA program).

[10] Order (Adopting Transcript Corrections, Denying Intervenors' Post-Hearing Motion for Admission for Excluded Exhibits, and Closing the Record), dated February 4, 2014, at 5 (unpublished).

[11] LBP-14-07 at 20.

[12] *Id*. at 24.

findings necessary to support issuance of the COL until DTE provided satisfactory proof of a fully-implemented QA program.[13]

With respect to Contention 15A, the Board first found that under the regulations DTE had the option to delegate to its contractor (B&V) the work of establishing and executing the QA program for site characterization activities, provided that the contractor had a QA program that satisfied Appendix B requirements and DTE retained responsibility for the program.[14] The Board then addressed whether B&V had, and applied, an Appendix B QA program to site investigation activities and whether DTE in fact retained responsibility for the QA program during site investigation activities. The Board found as a matter of fact that DTE contracted with B&V to perform safety-related activities that supported development of the Fermi 3 COLA, including site characterization, and that B&V personnel and subcontractors performed those activities under the B&V Appendix B/NQA-1 QA program.[15] The Board also recognized that DTE directly observed the B&V site characterization work and established an Owner's Engineer ("OE") organization to perform QA oversight of the B&V work.[16] The Board acknowledged that the B&V QA program had been audited by the Nuclear Procurement Issues Committee ("NUPIC") prior to placement of the purchase order by DTE for site characterization services and that DTE performed its own subsequent audit of B&V in 2009.[17] DTE also established an in-house Appendix B program prior to accepting any work product from B&V for

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13 *Id*. at 20-21.

14 *See id*. at 29 (citing 10 C.F.R. Part 50, Appendix B).

15 *Id*. at 32 (¶¶8-12).

16 *Id*. at 33-34 (¶¶13,17-18).

17 *Id*. at 33 (¶¶14-16).

use in the COLA, and applied that program to the work product.[18] The Board ultimately found that DTE, through direct supervision, oversight, and contractual control of B&V and its QA program during the pre-application period, retained and exercised sufficient responsibility for the Fermi 3 QA program during the pre-application period.[19] As a result, the Board concluded that DTE's QA efforts during the pre-application period satisfied Appendix B requirements so that there is reasonable assurance that the data used in the design of Fermi 3 is of high quality.[20] The Board accordingly ruled for DTE on Contention 15A.

With respect to Contention 15B, which relates to post-application QA program implementation, the Board noted that it was undisputed that the QA plan in the Fermi 3 COLA met the requirements of Appendix B and was consistent with the NRC's Standard Review Plan.[21] The Board found as a factual matter that all QA violations identified by the Staff in 2010 had been resolved, and that the record demonstrated that the violations had no effect on any safety-related activities performed after initial submittal of the application.[22] The Board also found no evidence of a pervasive failure to comply with QA requirements.[23] As a result, the Board concluded that there is reasonable assurance that the plant can and will be operated without endangering the public health and safety because DTE has provided satisfactory evidence of a fully implemented QA program governing the design, construction, and operation of Fermi 3 in

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18 *Id*. at 34-35 (¶¶19-20).

19 *Id*. at 39.

20 *Id*. at 39-40.

21 *Id*. at 40.

22 *Id*. at 37-38 (¶¶27-28); *id*. at 40.

23 *Id*.

conformity with all relevant NRC regulations.[24] The Board therefore ruled for DTE on Contention 15B.[25]

Against the backdrop of the substantial record, the Intervenors fail to identify any basis for Commission review. While the Commission has authority to make its own *de novo* findings of fact, it "generally do[es] not exercise that authority where a Licensing Board has issued a plausible decision that rests on carefully rendered findings of fact."[26] To invoke discretionary Commission review of Board fact findings, the Intervenors must demonstrate that the Board's findings were "clearly erroneous," *i.e.*, "not even 'plausible in light of the record viewed in its entirety.'"[27] The Commission's standard of "clear error" for overturning a Board decision "is quite high."[28] Here, the Intervenors largely re-argue earlier, meritless positions. As discussed below, these arguments cast no doubt on the validity of the Board's factual findings and conclusions, let alone establish "clearly erroneous" findings or prejudicial procedural errors. The record indisputably supports the Board's findings on the technical, fact-intensive issues associated with Contention 15.

First, the supposed "judicial admissions" by Staff counsel or DTE (Pet. at 11-12, 20) are irrelevant to the Board's ultimate conclusion. It is undisputed that DTE did not have its

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24 *Id*.

25 *Id*.

26 *Id.; see, e.g., Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-02-22, 56 NRC 213, 222 (2002); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 382 (2001); *Hydro Resources Inc*., CLI-01-04, 53 NRC at 45; *Louisiana Energy Services, LP* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 93 (1998).

27 *See Kenneth G. Piece* (Shorewood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985)).

28 *PFS*, CLI-03-8, 58 NRC at 26.

own in-house Appendix B program during the site characterization work.[29] But, as the Board acknowledged, it is enough that the site characterization work be performed under an QA program that meets Appendix B and that DTE retain responsibility for that work.[30] In this case and consistent with the plain language of Appendix B that allows delegation of the QA function, the record demonstrates that all pre-application work within the scope of the QA requirements (including site characterization) was performed under an established Appendix B QA program (B&V's) and that DTE had its own in-house QA program prior to accepting any safety-related COLA work product from B&V.[31]

Second, there was absolutely no evidence presented that the "FSAR is unreliable" as asserted by Intervenors (Pet. at 12). The Intervenors at no point ever identified any work or any aspect of the COLA that was inadequate due to a lack of QA (or for any other reason).[32] In addition, the allusion to "site characterization issues that continue to plague the Fermi 3 Licensing Project" (Pet. at 13) is simply unfounded. As DTE explained, there are no outstanding site characterization issues relating to the Fermi 3 COL Application.[33] And, to the extent that the

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29 LBP-14-07 at ¶8.

30 *Id*. at 28-29.

31 *Id*. at ¶¶12, 19-20.

32 *See, e.g.*, Tr. at 460 (Intervenors' witness answering "no" when asked by Board whether he had identified any specific instance of a material safety significant error in a safety-related portion of the Fermi 3 COL application).

33 DTE Written Rebuttal Testimony at A18. DTE explained that, at that time, it was continuing to work on a Soil-Structure Interaction ("SSI") analysis. But, that work was unrelated to the site investigation for Fermi 3. *Id*. In 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. That analysis is now complete. In any event, the SSI analysis (and the need for the analysis) had nothing to do with data gathered during the site investigation phase. Revision 7 was submitted in March 2010 —

Intervenors are referring to their unsupported claims that the site contains "karst" geology,[34] those assertions are demonstrably false.[35]

Third, the Intervenors' primary challenge to the Board's findings relates to the issue of whether DTE in fact retained responsibility for the QA program during the pre-application period.[36] The Board concluded that DTE retained responsibility through direct supervision, oversight, and contractual control of B&V and its QA program during the pre-application period, and in fact exercised sufficient responsibility for the Fermi 3 QA program during that time frame.[37] As described below, the record on this point is ample. The Board's factual findings on the point are sound and entitled to deference.

More specifically, the record is clear that to fulfill its obligation to provide quality information in support of its application, DTE selected a vendor that had in place a QA program that met the Appendix B requirements. DTE chose to use that program for the conduct of safety-related site investigation work and other COLA development work.[38] In keeping with Appendix

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nearly three years after the site investigation work. Nor does the need for the SSI analysis stem from any QA problems or concerns at the Fermi 3 project. *Id*.

34 *See* Tr. at 407 ("MR. GUNDERSEN: And karst geography is extraordinarily difficult for heavy structures to withstand. The problems that Fermi is encountering now are almost identical to the problems that Levy County was encountering on the karst geography.").

35 *See* Tr. at 559-560 (MR. THOMAS: explaining that no karst formation were found during either the Fermi 2 or the Fermi 3 site investigation and noting that the site is hard rock dolomite); *id*. at 561 (JUDGE CHARBENEAU: noting that dolomite does not develop cavities, such as those seen in karst formations).

36 Pet. at 20.

37 LBP-14-07 at 39.

38 *Id*.

B and NQA-1,[39] DTE retained responsibility for the QA program by requiring by contract that B&V have a QA program that satisfied Appendix B requirements and apply that QA program to safety-related COLA activities.[40] DTE reviewed and approved the geotechnical investigation plan, facilitated site work, and conducted oversight in the field while the work was being performed.[41] DTE also retained an Owner's Engineer that provided oversight and conducted surveillances of site investigation activities.[42] In the end, DTE did not accept any work product from B&V until DTE had its own Appendix B QA program in place to govern the receipt, review, and acceptance of safety-related COLA work product.[43] For these reasons, the Board concluded that DTE retained responsibility for the work product during the pre-application period.[44] The Intervenors have pointed to no "clear error" relating to this conclusion.

Finally, each of the Intervenors' arguments (Pet. at 2, 12-13, 20-23) is refuted by clear evidence in the record that was accepted by the Board as persuasive. Contrary to the Intervenors' assertions, there was no QA "invisibility" on the Fermi 3 project (Pet. at 12) and there was not a "dearth of retained responsibility" (Pet. at 19). There also was no support for the charge of "management intentions of avoiding QA compliance" (Pet. at 2). Instead, as noted

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39 NQA-1–1994, *Quality Assurance Requirements for Nuclear Facility Applications* (Exh. BRD-001) is an NRC-endorsed standard for QA programs that satisfy Appendix B. DTE Initial Testimony (Exh. DTE 015) at A22.

40 Tr. at 472; Exh. DTE000109 at 4; Exh. DTE000110 at 18.

41 Tr. at 472-473.

42 *Id*. at 473. The OE reported to DTE and performed work at DTE's direction. Records of surveillances were admitted as exhibits in the hearing. *See, e.g.*, Exhs. DTE000041 - DTE000046.

43 LBP-14-07 at 34 (¶19) *citing* DTE Initial Written Testimony (Exh. DTE000015) at A30, A55; *see also* LBP-14-07 at 39.

44 LBP-14-07 at 38-39.

above, the Board found that DTE deliberately retained an experienced nuclear contractor with an established Appendix B QA program, and required the contractor to apply the program to an appropriate scope of site investigation activities. DTE retained responsibility for QA throughout the pre-application period by direct supervision, oversight, and contractual control.

There also was no evidence of "confusion and lack of organization control" (Pet. at 13). The major work interfaces for activities affecting COL Application development, including clear and effective lines of communication, were established through implementation of a Project Management Memorandum ("PMM").[45] Likewise, there was no agreement from DTE that its QA program was "poorly-managed" (Pet. at 15) or any "admitted cluelessness" about the state of B&V's QA program (Pet. at 23). In fact, the PowerPoint presentation cited by Intervenors (at 15) was given to an industry group working on QA issues for new plants shortly after the NRC issued its initial QA notice of violation to DTE. The presentation is not evidence of program failure, but rather reflects DTE's willingness to discuss lessons-learned with the industry as well as its continual improvement efforts.[46] The email cited by Intervenors (at 23) likewise 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 to inform the manner in which he would perform his duties as the QA Manager.[47] And, the Intervenors'

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45 Exh. DTE000056 at 23. The PMM is a controlled project document that served as the B&V mechanism for addressing project activities, including project organization, responsibilities, QA, interfaces, and communication mechanisms with DTE. The PMM identified the quality attributes required for the B&V work activities consistent with the contract and summarizes how QA processes are to be applied to the various activities and entities involved in the project, including site investigation subcontractors.

46 DTE Written Rebuttal Testimony at A38.

47 *Id*. at A37.

witness was simply incorrect when he alleged a three-month "gap" in QA oversight (Pet. at 21).[48]

At bottom, the Petition for Review fails to show any clearly erroneous factual finding or any finding of fact in conflict with a decision in any other case. The Petition for Review amounts to a reprise of hyperbole that was offered below and rejected by the Board in LBP-14-07. No rhetorical flourish can overcome the absence of evidentiary support for the Intervenors' position. The Board's decision is based on sound reasoning and is well-supported by the record. The Board admitted the issue for hearing, obtained written evidence, heard oral argument and testimony, and ultimately addressed the issues on the merits. The Intervenors have presented no reason for the Commission to second-guess the Board factual findings.[49]

3. There Was No Legal Conclusion Without Governing Precedent or any Departure from Governing Law

The Intervenors also have failed to identify any faulty legal conclusion. As the Board noted, all the parties agreed that "perfection" in a quality assurance program "is not a precondition for a license," but rather the test is whether there is "reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety."[50] The Intervenors do not dispute that this is the appropriate standard.[51] Similarly, for licensing purposes, the Board concluded that pre-application activities must be performed under a QA

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48 DTE Initial Written Testimony (Exh. DTE000015) at A88; DTE Written Rebuttal Testimony (Exh. DTE000101) at 25; Tr. at 451-454.

49 *Shearon Harris*, CLI-01-11, 53 NRC at 391.

50 LBP-14-07 at 21-22, citing *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1345 (1983) (other citations omitted).

51 *See* Pet. at 26 (citing *Diablo Canyon*, ALAB-756, 18 NRC at 1345).

program that satisfies the requirements of Appendix B — a conclusion that is also consistent with the Intervenors' position.[52]

With respect to compliance with Appendix B during the pre-application period, the Board explained that Appendix B expressly allows the applicant to "delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but [the applicant] shall retain responsibility for the quality assurance program."[53] The Board correctly noted that Appendix B does not define what is meant by "retain responsibility", which suggests that it should consider all relevant facts and circumstances to determine whether DTE exercised sufficient supervision, oversight, and contractual control of B&V and its QA program during the pre-application period.[54] DTE and NRC Staff demonstrated that there was an Appendix B program in place during pre-application activities (B&V's during initial site investigation work, then DTE's prior to accepting work product from B&V) and that DTE retained responsibility for the QA program at all times.[55] The

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52 LBP-14-07 at 26. DTE accepts this conclusion. While the NRC Staff previously declined to take enforcement action for QA "violations" that may have occurred in the pre-application period, the enforcement issue is irrelevant in the context of licensing (as the Board recognized). In any event, the difference among the parties is largely one of semantics. DTE and the NRC Staff agree that data and information developed during the pre-application period must have been (and was in fact) collected in compliance with Appendix B. And, DTE and the NRC Staff agree that the NRC Staff may not issue a violation for a failure to comply with Appendix B in the pre-application period though, as the Board noted (at 28), the NRC Staff could deny issuance of a COL that was based on information developed under a program that did not conform to Appendix B.

53 10 C.F.R. Part 50, App. B, at I. Organization.

54 The Intervenors' only argument is whether or not DTE, as a matter of fact, retained the QA responsibility. This issue should therefore be assessed against the "clearly erroneous" standard, as discussed above.

55 LBP-14-07 at 38-39.

Board's conclusion — that maintaining an in-house Appendix B program is not the only way to retain responsibility — is consistent with the regulation and the record.[56]

4. The Petition for Review Fails to Identify Any Substantial Question of Law, Policy, or Discretion, or Any Other Consideration that Merits Review

Intervenors' argument that DTE failed to obtain an exemption (Pet. at 24) is simply unfounded. The Fermi 3 QAPD is based on a generic template, NEI-06-14A, "Quality Assurance Program Description," that has been established for use by COL applicants as a means to implement the applicable requirements and industry standards for QA programs. The NEI template, like the Fermi 3 QAPD, is based on the standards of NQA-1-1994. The NRC Staff has endorsed the NEI template.[57]

Contrary to the Intervenors assertion (at 24), no exemption was needed from an NEI guidance document — either as a matter of fact or law. First, the NEI template does not require an in-house QA program. Consistent with Appendix B and NQA-1, delegation is specifically addressed (and permitted) in the NEI QAPD template in Part 2, Section 2.2 (Exh. DTE000091 at 12). That section explains that the applicant/licensee may delegate to others all or part of the activities of planning, establishing, and implementing the program for which they are responsible, but must retain the responsibility for the program's effectiveness.[58] Here, DTE

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56 *Id*. at 29. The Board specifically rejected the Intervenors' argument that the only way in which DTE could "retain responsibility" during the pre-application period was through an in-house QA program that met Appendix B requirements, noting that Appendix B permits delegation. *Id*. at 29. NQA-1 and the NEI QA template also permit delegation. Exh. DTE000091 at 12; Exh. BRD-001 at 10 (Section 2.2); Tr. at 472, 477 (ASLB and DTE both acknowledging that NQA-1 permits delegation).

57 The NRC-endorsed QAPD template was initially released in May 2008 as NEI-06-14A, Revision 5 (ADAMS Accession No. ML081350560) (Exh. DTE000089). The NRC-approved version of NEI-06-14A, Revision 7, was issued by NEI in August 2010 (ADAMS Accession No. ML102370305) (Exh. DTE000091).

58 DTE Initial Written Testimony at A93; DTE Written Rebuttal Testimony at A14.

delegated QA activities to B&V, while retaining overall responsibility for the program's effectiveness. There was therefore no "deviation" from the template.[59]

Moreover, use of the NEI template is a tool to promote consistency and efficiency — it is not, in and of itself, a requirement or part of a rule. There can be no need for an "exemption" if there is no regulatory requirement. The Intervenors are therefore simply wrong in asserting (Pet. at 25) that DTE must identify "special circumstances" to justify a departure from a "rule."

CONCLUSION

For the foregoing reasons, the Commission should deny the Intervenors' Petition for Review. It raises no "substantial question" about the "specified matters" set forth in Section 2.341(b)(4) that would warrant discretionary Commission review.

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[59] *See also* Lipscomb Direct Test. (Exh. NRC S23) at A17 (explaining that the NRC Staff reviewed the Fermi 3 QAPD against the acceptance criteria in SRP Section 17.5 and against NEI 06-14A, Revision 7, in 19 areas). The NRC Staff concluded that, for each of these areas, the Fermi 3 QAPD met all applicable acceptance criteria and therefore complies with NRC regulations. *Id.*; Exh. NRC S1.

Dated at Washington, District of Columbia
this 14th day of July 2014

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S ANSWER OPPOSING PETITION FOR REVIEW OF LBP-14-07" in the above captioned proceeding have been served via the Electronic Information Exchange this 14th day of July 2014.

Respectfully submitted,

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