



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

October 8, 2014

EA-14-022

Mr. Vito A. Kaminskas
Site Vice-President
DTE Electric Company
Fermi 2 - 210 NOC
6400 North Dixie Highway
Newport, MI 48166

**SUBJECT: FERMI POWER PLANT, UNIT 2, REQUEST FOR APPEAL AND ADDITIONAL
INFORMATION REGARDING GREATER THAN GREEN FINDING AND NOTICE
OF VIOLATION 05000341/2013408-01**

Dear Mr. Kaminskas:

In a letter to DTE Electric Company (DTE), dated May 29, 2014, the U.S. Nuclear Regulatory Commission (NRC) provided the final significance determination for a security-related finding of at least low to moderate security significance (Greater than Green). In that letter, we stated that DTE had 30 calendar days from the date of the letter to appeal the NRC's determination of the significance and that such an appeal would be considered to have merit only if it met the criteria given in Inspection Manual Chapter (IMC) 0609, Attachment 2, "Process for Appealing NRC Characterization of Inspection Findings (SDP Appeal Process)" (ML101400502).

In a letter dated July 30, 2014, you provided security-related information to the NRC related to the subject of the May 29th letter, that you stated was not readily available to DTE when a Regulatory Conference was held on April 14, 2014, for the security-related finding. You requested that the NRC reconsider its final significance determination of the finding using the newly provided information.

The NRC determined that your request for reconsideration of the significance of the security-related finding exceeded the 30-day limit for appealing the determination of significance for the Greater than Green finding. Additionally, we determined that your request did not meet the criteria established in IMC 0609, Attachment 2, as having sufficient merit for review in accordance with the prescribed appeal process. Specifically, IMC 0609 states, in part, that, "new information will be considered only if the licensee informed the staff that additional

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information was under development prior to or during the Regulatory Conference, or in their written response to the preliminary significance determination.” Therefore, we did not evaluate the new information and its impact on the final security significance as it relates to the guidance of IMC 0609.

Notwithstanding the failure to meet the criteria established in IMC 0609, Attachment 2, the NRC agreed that the additional information and physical characteristics may affect the significance of the issue and associated finding. The Region III staff performed a review of the information and determined that consideration of the new information would not change the previously determined security significance of the finding.

The enclosure to this letter documents our conclusion and the associated basis given the specific additional information you provided.

Your letter also recognizes that the new information impacted the quality of information that you provided to the NRC at the Regulatory Conference. While we understand that the correct information may not have been known at that time, we question if it could have been obtained by your staff prior to the Regulatory Conference. Moreover, the quality of the information originally provided is subject to the NRC requirements contained in Title 10 of the *Code of Federal Regulations* (CFR) 50.9, “Completeness and Accuracy of Information.” However, the new information did not alter our regulatory conclusion and furthermore, you notified us of the new information; therefore, no violation of this requirement occurred.

If you have any questions on our conclusion on the merit of your appeal request or on our review of the specific additional information you provided, please contact Mr. Kenneth G. O’Brien, Director, Division of Reactor Safety, at (630) 829-9700, or Mr. Richard A. Skokowski, Chief, Plant Support Branch, at (630) 829-9757.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390, “Public Inspections, Exemptions, Requests for Withholding,” of the NRC’s “Rules of Practice,” a copy of this letter will be available electronically for public inspection in the NRC’s Public Document Room or from the Publicly Available Records (PARS) component of the NRC’s Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

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Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 50-341
License No. NPF-43

Non-Public Enclosure:
NRC Consideration of Additional Information

cc w/encl: N. Simonian, NSIR/DSO/DDSO/ST
E. Wharton, NSIR
T. Dimitriadis, RI
B. Desai, RII
M. Haire, RIV
D. Furst, OE
K. Yale, State Liaison Officer, State of Michigan

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