

April 10, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
DTE ELECTRIC CO.) Docket No. 50-341-LR
)
(Fermi Nuclear Power Plant, Unit 2))

NRC STAFF ANSWER OPPOSING CRAFT'S MOTION FOR CHANGE OF VENUE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer in opposition to the motion filed by the Citizens' Resistance at Fermi 2 (CRAFT) requesting that the location of any evidentiary hearing in this proceeding be moved from Monroe, Michigan, to "the Detroit area."¹ The Atomic Safety and Licensing Board (Board) should deny this motion because (1) it does not include a certification by CRAFT's representative that CRAFT made a sincere effort to contact the other parties in the proceeding and resolve the issue raised in the motion and (2) it does not demonstrate that, on balance, the convenience of the parties and the public interest would be better served by a hearing in Detroit instead of in Monroe.

BACKGROUND

This proceeding concerns the April 24, 2014, filing by DTE Electric Co. (DTE) of a license renewal application (LRA) for the Fermi Nuclear Power Plant, Unit 2 (Fermi 2) located in

¹ CRAFT Request for Change of Venue (Apr. 1, 2015) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15091A780) (Motion).

Monroe, Michigan.² The Staff accepted the Fermi 2 LRA for review and published a *Federal Register* Notice on June 18, 2014, providing a Notice of Opportunity for Hearing.³ On August 18, 2014, CRAFT filed a petition for leave to intervene and request for hearing regarding the Fermi 2 LRA, which proposed fourteen contentions.⁴ The Board narrowed and admitted two of these proposed contentions.⁵ Subsequently, the Board issued an initial scheduling order stating that the Fermi 2 LRA proceeding related to the admitted contentions would be conducted using the procedures of 10 C.F.R. Part 2, Subpart L.⁶ The initial scheduling order also stated that, as necessary, any evidentiary hearing in this proceeding would be held 175 days after the public-availability of the relevant final supplemental environmental impact statement or final safety evaluation report or 175 days after any Board order on the admission of new or amended contentions based on these documents.⁷ The Board, however, has not set a location for any such hearing.

DISCUSSION

I. CRAFT's Failure to Consult Is Fatal to its Motion

In response to a previous CRAFT motion, the Board emphasized that CRAFT needs to

² See Letter from J. Todd Conner, Site Vice President, DTE Energy Co., to NRC, Fermi 2 License Renewal Application (April 24, 2014) (ADAMS Accession No. ML14121A532) (transmitting the Fermi 2 LRA). The Fermi 2 LRA itself is available at ADAMS Package No. ML14121A554.

³ See DTE Electric Company; Fermi 2, 79 Fed. Reg. 34,787 (June 18, 2014).

⁴ Citizens' Resistance at Fermi 2 (CRAFT) Petition for Leave to Intervene and Request for a Public Hearing Upon DTE Electric's Request of 20-Year License Extension for the Enrico Fermi 2 Nuclear Reactor (Aug. 18, 2014) (ADAMS Accession No. ML14231B142) (CRAFT Petition).

⁵ The Board also narrowed and admitted one proposed contention from Don't Waste Michigan, Citizens Environment Alliance of Southwestern Ontario, and Beyond Nuclear (Joint Petitioners). *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC __, __ (Feb. 6, 2015) (slip op. at 1-2).

⁶ Initial Scheduling Order, at 1 (Feb. 27, 2015) (unpublished Board order) (ADAMS Accession No. ML15058A703) (citing Order (Identifying Hearing Procedures and Scheduling Conference Call) (Feb. 12, 2015) (unpublished Board order) (ADAMS Accession No. ML15043A541)).

⁷ *Id.* at 4.

file motions that “conform to the requirements of 10 C.F.R. § 2.323(b).”⁸ The Board stated that a “motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding”⁹ Later, in its initial scheduling order, the Board again emphasized this requirement by stating that parties seeking to modify the proceeding’s schedule “should first attempt to resolve the issue with the other parties, and if unable to do so must include the certification required by 10 C.F.R. § 2.323(b) stating that the party made a sincere effort to contact the other parties and to resolve the issues raised in the motion.”¹⁰ Prior to filing its motion to change venue, however, CRAFT did not consult with the Staff. Additionally, CRAFT’s motion did not include a certification that CRAFT had consulted with the parties prior to its filing. Therefore, according to the Commission’s regulations and the Board’s orders,¹¹ CRAFT’s motion must be rejected.

II. Neither the Convenience of the Parties Nor the Public Interest Would Be Better Served by Changing Venue

CRAFT’s motion should also be denied because, on balance, the convenience of the parties and the public interest would not be better served by holding any hearing in this proceeding in Detroit instead of in Monroe.¹²

The clearest statement of the Commission’s policy on the location for hearings was found in Appendix A, “Statement of General Policy and Procedure: Conduct of Proceedings for

⁸ Order (Directing Re-filing of Request for Extension of Time), at 1 (Sep. 17, 2014) (unpublished Board order) (ADAMS Accession No. ML14260A306).

⁹ *Id.* (quoting 10 C.F.R. § 2.323(b)).

¹⁰ Initial Scheduling Order, at 5 (emphasis added).

¹¹ 10 C.F.R. § 2.323(b); Initial Scheduling Order, at 5; Order (Directing Re-filing of Request for Extension of Time), at 1-2.

¹² While CRAFT’s motion urges a different venue for the hearing, the Board has not yet set a hearing location or a specific time. Thus, any motion to change venue is premature absent an order setting the place and time for a hearing.

the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189a of the Atomic Energy Act of 1954, as Amended” to 10 C.F.R. Part 2. Although Appendix A was removed from the Commission’s regulations in 2004¹³ and was only applicable to mandatory hearings, it is still instructive.¹⁴ Appendix A to 10 C.F.R. Part 2 stated that, “[i]t is the Commission's policy and practice to begin the evidentiary hearing in the vicinity of the site of the proposed facility.”¹⁵ However, “[i]n fixing the time and place of any conference . . . due regard shall be had for the convenience and necessity of the parties, petitioners for leave to intervene, or the representatives of such persons, as well as of the Board members, the nature of such conference . . . and the public interest.”¹⁶ Consequently, since Fermi 2 is located in Monroe, the Commission’s policy and practice would indicate that any hearing related to the facility should be held in Monroe absent some showing by CRAFT that the balancing of the convenience and necessity of the parties and the public interest would support holding the hearing elsewhere;¹⁷ however, CRAFT has not made such a showing.

A hearing in Detroit would not be significantly more convenient for all of the parties; instead, there would be, at most, only a minimal increase in convenience for CRAFT and a

¹³ See Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,274 (Jan. 14, 2004) (final rule).

¹⁴ See, e.g., Memorandum and Order (Denying Motion Requesting Reconsideration of Initial Prehearing Conference Location), at 2 n.2 (Apr. 5, 2004) (unpublished) (ADAMS Accession No. ML040990460) (relying on the Commission policy on the location of prehearing and hearing sessions provided in Appendix A to 10 C.F.R. Part 2 even though that policy had since been withdrawn); Memorandum and Order ([Citizens Awareness Network, Inc.] Motion for Schedule Change and Change of Hearing Location), at 4 (Dec. 22, 2000) (unpublished) (ADAMS Accession No. ML003780267) (“Although these proceedings are not technically subject to [the Appendix A to 10 C.F.R. Part 2] guidelines, the principles expressed therein may be appropriate.”).

¹⁵ 10 C.F.R. Part 2, Appendix A § I(a) (2004).

¹⁶ 10 C.F.R. Part 2, Appendix A § I(b) (2004).

¹⁷ Of additional note are the facts that the public scoping meetings related to the development of the environmental impact statement for the Fermi 2 LRA proceeding were held in Monroe, see DTE Electric Company; Fermi 2, 79 Fed. Reg. 36,837, 36,839 (June 30, 2014), and that the Fermi Nuclear Power Plant, Unit 3 combined license contested proceeding was held in Monroe, see Notice of Hearing, 78 Fed. Reg. 29,781, 29,781 (May 21, 2013).

decrease in convenience for the Joint Petitioners, which have members and representatives located in Ohio, for DTE, which has employees and representatives in Monroe, and, potentially, for the Staff, which has resident inspectors in Monroe. A hearing in Detroit would also not better serve the public interest for open and accessible hearings. As the location of Fermi 2, Monroe is the most central location for any hearing related to Fermi 2. Therefore, by moving the hearing from Monroe to Detroit, a substantial portion of the public that could be impacted by the hearing, including those living closest to Fermi 2, would be forced to travel further to attend the hearing.

On balance, CRAFT's request to move any evidentiary hearing in this proceeding from Monroe to Detroit would not significantly improve the convenience of the hearing for the parties or better serve the public interest and, therefore, should be denied.

CONCLUSION

For the reasons set forth above, the Board should deny CRAFT's motion to move any evidentiary hearing in this proceeding from Monroe to Detroit.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 10th day of April, 2015

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER OPPOSING CRAFT'S MOTION FOR CHANGE OF VENUE," dated April 10, 2015, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 10th day of April, 2015.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 10th day of April, 2015