

April 10, 2015

Chairman Stephen G. Burns
Commissioner Kristine L. Svinicki
Commissioner William C. Ostendorff
Commissioner Jeff Baran

In the matter of
DTE ELECTRIC CO.
(Fermi Nuclear Power Plant, Unit 3)
Docket No. 52-033

Dear Chairman and Commissioners,

On April 5, 2015, the NRC Staff notified the Commission of two recent developments related to consultation with U.S. Fish and Wildlife Service (“FWS”) under Section 7 of the Endangered Species Act (“ESA”). The first development relates to completion of informal consultation with FWS on the rufa red knot. DTE is pleased that the NRC Staff has received concurrence from FWS.

The second development relates to the publication by FWS of an ESA listing determination of “threatened” for the Northern long-eared bat in the *Federal Register* on April 2, 2015 (80 FR 17974). The final listing decision does not become effective until May 4, 2015. In the notice to the Commission, the NRC Staff explained that it had developed a supplemental BA for this species and, after reviewing the details of the listing decision, submitted it to FWS on April 3, 2015. DTE appreciates the NRC Staff’s prompt action in response to the FWS listing decision and its proactive efforts in advance of the effective date of the rule.

In response to the NRC Staff’s notice to the Commission, DTE wants to clarify that the NRC need not wait for FWS concurrence on the supplemental BA for the Northern long-eared bat to issue the COL for two reasons. First, the final rule amending 50 C.F.R. § 17.11 is not effective until May 4, 2015. Section 7 consultation is not required prior to the effective date of the rule. The NRC therefore could issue the COL in advance of the rule’s effective date, even if it has not yet received concurrence from FWS. Second, Section 7 consultation for the Fermi 3 COL is, in any event, limited to NRC-authorized activities. The ESA prohibits agencies from “authorizing, funding, or carrying out” activities that may affect a listed species. According to the NRC Staff’s supplemental BA, clearing of trees is the principal activity that could potentially affect the species. However, clearing of trees is a preconstruction activity that can be carried out without prior NRC approval. Issuing the COL would not “authorize” any action that could affect the species.

Moreover, because the ESA applies to private parties, DTE would be subject to the prohibition on “take” of any species listed as threatened or endangered under the ESA regardless of whether there is consultation and concurrence. The prohibition on take of a listed species would apply during preconstruction, construction, and operation of Fermi 3. And, the Environmental Protection Plan (“EPP”) that is included as a license condition in the draft Fermi 3 COL

specifically requires DTE to notify the NRC if a newly-listed species is found to occur in an area affected by the plant or if any take of a listed species occurs at the site.

Consistent with prior determinations in this matter by the Commission and by the NRC Staff, any offsite transmission corridor development is unrelated to COL issuance. DTE agrees with the NRC Staff that, if offsite transmission lines are built, future interaction with FWS may be necessary at that time. However, those interactions would be between FWS and the transmission corridor developer and operator, *ITCTransmission*. *ITCTransmission*, not DTE, must obtain applicable regulatory approvals to develop the transmission system and would construct, own, and operate the offsite transmission lines.

This licensing review now has spanned more than 6.5 years, thousands of hours of expert review and analysis, and a contested adjudicatory hearing on safety and environmental issues. Based on the Commission's internal procedures, a decision on uncontested hearing issues is imminent. DTE urges the Commission to act expeditiously on the remaining issues pending before it and authorize issuance of the COL.

Respectfully submitted,

/s/ signed electronically by
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COUNSEL FOR DTE ELECTRIC
COMPANY

Dated at Washington, District of Columbia
this 10th day of April 2015

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))

CERTIFICATE OF SERVICE

I hereby certify that copies of “DTE Response to NRC Staff Notification letter” in the above captioned proceeding have been served via the Electronic Information Exchange this 10th day of April 2015.

Respectfully submitted,

/s/ signed electronically by
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