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Leonard Bickwit, Esq.
General Counsel
U. S. Nuclear Regulatory Commission
1717 H Street, N. W.
Washington, D. C. 20555

Re: The Detroit Edison Company, et al.
Construction Permit No. CPPR-87

Dear Mr. Bickwit:

SERVED APR 28 1981

As the accompanying letter from the owners of the Enrico Fermi Atomic Power Plant Unit 2 ("Fermi 2") indicates, two of the owners, Northern Michigan Electric Cooperative, Inc. ("NMEC") and Wolverine Electric Cooperative, Inc. ("WEC"), are considering a statutory merger, a move that has been recommended by the U. S. Rural Electrification Administration. If NMEC and WEC do consummate such a merger, the surviving electric utility cooperative would retain the 20% interest in Fermi 2 now held by NMEC and WEC, and the overall ownership of Fermi 2, with our client The Detroit Edison Company ("Detroit Edison") holding an 80% interest, would not be changed.

If the proposed statutory merger of NMEC and WEC takes place, we believe that no amendment of the Fermi 2 construction permit would be required, because the proposed merger would constitute neither a transfer of control of a license within the meaning of Section 184 of the Atomic Energy Act of 1954, as amended ("the Act"), nor a transfer of ownership of a facility within the meaning of Section 101 of the Act. Accordingly, the accompanying letter requests a determination that the merger would not be deemed to be a transfer of license or facility requiring an amendment to the construction permit.

The proposed merger clearly would not constitute a transfer of control of a license under Section 184 of the Act. By the terms of the February 8, 1977 "Participation Agreement Between the Detroit Edison Company and Northern Michigan Electric Cooperative, Inc., and

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Wolverine Electric Cooperative, Inc." ("Agreement"), NMEC and WEC jointly acquired a 20% undivided interest in Fermi 2 (Article 2.1) and in "the capacity and net energy output of Fermi 2." (Article 2.2). However, no transfer of control of the license or any activity thereunder took place as a result of the Agreement. Detroit Edison has sole responsibility for construction of the plant (Article 5.3.1), and sole authority to manage, control, maintain and operate Fermi 2 (Article .1). Furthermore, NMEC and WEC irrevocably appointed Detroit Edison as their agent to act on their behalf in the planning, design, licensing, construction, completion, operation, maintenance, retirement and disposal of Fermi 2. (Article 9.1). Mr. Edson G. Case, Acting Director of Nuclear Reactor Regulation, in a March 3, 1978 letter to Dr. Robert G. Asperger, determined that the original sale of the 20% interest by Detroit Edison to NMEC and WEC was not a "transfer of control of a license" under Section 184 and thus did not require Commission approval pursuant to 10 C.F.R. §50.80. It follows that the proposed merger, under which no element of the Agreement would be altered and under which the surviving cooperative would simply assume the interest of NMEC and WEC under the Agreement, is not subject to the requirements of 10 C.F.R. §50.80.

We believe that the proposed merger also would not constitute a Section 101 transfer of facility ownership requiring an amendment to Construction Permit No. CPPR-87. We are aware of Commission precedent suggesting that "[a]ny transfer of ownership would require Commission approval." Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), 7 NRC 1, 22 (1978). That statement was made in reference to a proposed sale of an ownership interest by one utility to another. Here, no sale is proposed, and we do not believe that the statutory merger of two existing owners of the unit properly may be viewed as a "transfer of ownership." For example, in construing Federal tax laws, courts have consistently held that ownership of the assets of the constituent corporations does not change in a statutory merger that is a "mere change in identity, form or place of organization." Home Construction Corporation of America v. U. S., 311 F. Supp. 830 (S.D. Ala. 1969), aff'd, 439 F.2d 1165 (5th Cir. 1971); see also Stauffer's Estate v. Commissioner of Internal Revenue, 403 F.2d 611 (9th Cir. 1968); Associated Machine v. Commissioner of Internal Revenue, 403 F.2d 622 (9th Cir. 1968). Moreover, under state corporation law, a statutory merger of two corporations generally is not viewed as a sale or liquidation of corporate property, but a consolidation of property, powers and facilities that does not impair any interests in property. Mich. Comp. Laws Anno. §450.1722; see also Torrey Delivery, Inc. v. Chautaugua Truck Sales and Service, Inc., 366 N.Y.S. 2d 506, 47 A.D.2d 279 (1975); In re Daily's Estate, 186 A. 754, 323 Pa. 42 (1936).

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In addition, we believe that there are no policy considerations that would warrant characterizing the proposed merger as a transfer of ownership of the facility. All existing property, powers, obligations and facilities of NMEC and WEC will be consolidated in the surviving cooperative. NMEC and WEC currently are joint owners of a 20% undivided interest in Fermi 2. Following a statutory merger, the surviving corporation will continue to be the owner of the same 20% undivided interest. The financial condition of the surviving corporation, the only matter of real concern to the Commission, will be the same as that of NMEC and WEC combined. Indeed through greater management efficiencies the financial condition can be expected actually to improve.

As the merger moves closer to consummation, the cooperatives will be able to provide more detailed information as to its terms. However, it is important that Detroit Edison and the cooperatives receive assurance at this time that no \$50.80 amendment to the construction permit will be required before the merger can be effected. Therefore, we ask that you make the determination requested in the attached letter.

Very truly yours,

LeBoeuf, Lamb, Leiby & MacRae

By Harry E. Void
Partner

Attorneys for The Detroit
Edison Company