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March 28, 1986

Mr. James G. Keppler
Regional Administrator Region III
U.S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Re: The Detroit Edison Company (Fermi 2)
Docket No. 50-341; License No. NPF-43

Dear Mr. Keppler:

On February 15, 1986, the Safe Energy Coalition of Michigan ("SECOM") filed a petition with the Nuclear Regulatory Commission ("NRC") requesting that, pursuant to 10 C.F.R. §§ 2.202 and 2.206, certain enforcement proceedings be instituted against The Detroit Edison Company, co-owner and licensed operator of Fermi 2; Wolverine Power Supply Cooperative, Inc. is the plant's other co-owner. The relief sought was two-fold (Pet. at 2):

1. To "elevate" enforcement action against Detroit Edison resulting in a proceeding to revoke the Fermi 2 operating license; and

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2. To issue an order to show cause why Detroit Edison's license to operate Fermi 2 should not be revoked.

Though listed as two separate forms of relief, it is clear that the SECOM requests are identical and seek the commencement of a show cause proceeding under 10 C.F.R. § 2.202.

For the reasons discussed below, SECOM's petition is without basis and should be denied in all respects.

I. The SECOM Petition

In support of its requested relief, SECOM identifies five "allegations" which in its view warrant initiation of a show cause proceeding. The five SECOM "allegations" are (Pet. at 2-3):

1. The U.S. Nuclear Regulatory Commission has not elevated the enforcement actions against the licensee to the necessary levels mandated and provided for in the Acts and Code of Federal Regulations, as a result of the events that have occurred at the Fermi 2 nuclear power plant;
2. Continuing lack of management controls at levels required to meet NRC regulations and requirements; the result has been ineffective programs and incompetence at critical levels of the organization including operations, maintenance, security, and engineering;
3. The twenty-six violations issued recently were willful, in other words, showed careless disregard for requirements;
4. The licensee has been unable to comply with certain NRC requirements; and
5. The recently released operations improvement plan will not provide the substantive changes needed to correct the serious breakdown of operations at the Fermi 2 nuclear plant.

[Emphasis in original.]

In reality, the five claims are not allegations, but instead are conclusions or legal arguments in support of the

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requested relief. The factual bases for these conclusions and legal arguments are spread throughout the remaining 17 pages of SECOM's petition in random fashion. The SECOM petition does not clearly address each of the five "allegations," nor does it precisely identify the separate facts which are claimed to support each "allegation."

In order to better focus our analysis on the factual bases for the petition, and to determine whether there are any matters which require consideration in a show cause proceeding, listed below are those few issues which SECOM asserts warrant increased enforcement action.

1. Those items described as operational errors, degraded plant equipment and programmatic weaknesses in Mr. Keppler's letter of December 24, 1985. See Pet. at 6, 12.
2. The 26 violations reported in NRC Inspection Report No. 50-341/85040. See Pet. at 6-7, 13-15.
3. Concerns over the number, tracking and evaluation of Licensee Event Reports ("LER's"), as identified in NRC Inspection Report No. 50-341/85042 and an internal NRC memorandum of January 3, 1986. See Pet. at 7-9, 15.
4. Findings from various audits of Detroit Edison made during the construction phase of the Fermi 2 project which allegedly demonstrate that the Reactor Operations Improvement Plan and the Nuclear Operations Improvement Plan are inadequate to correct identified problems in the areas of plant operations, engineering, maintenance and security. See Pet. at 18-19.

The common characteristic of these items is that all were garnered from publicly available information. Indeed, most of the SECOM allegations are drawn directly from material in NRC inspection reports, letters and memoranda. Those allegations not based on NRC documents come from third-party audits of Detroit Edison's construction programs. The SECOM petition simply contains no new facts or claims; all of the information was previously available.

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II. Legal Standards Governing a Section 2.206 Petition

Pursuant to Section 2.206, one can petition the Commission to issue an order to show cause instituting a proceeding to modify, suspend, or revoke a license, or to take such other action as may be proper. The petition is to specify the action requested and "set forth the facts that constitute the basis for the request." 10 C.F.R. § 2.206(a). Well-established Commission precedent holds that a show cause proceeding will not be instituted unless "substantial health or safety issues" have been raised. See Consolidated Edison Co. of New York (Indian Point, Unit Nos. 1, 2 and 3), CLI-75-8, 2 N.R.C. 173, 176 (1975); Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 N.R.C. 429, 432-33 (1978), aff'd sub nom. Porter County Chapter of the Izaak Walton League v. NRC, 606 F.2d 1363, 1368 (1979).

Where the allegations in a Section 2.206 petition are drawn primarily from NRC inspection activities -- as is certainly the case here -- show cause proceedings generally have been viewed as unnecessary. See, e.g., Washington Public Power Supply System (WNP No. 2), DD-84-7, 19 N.R.C. 899, 922-23 (1984). This is because in such cases the petitioner does not seriously challenge the NRC Staff statement of the facts, but only disagrees as to the significance of those facts and the nature or extent of enforcement action to be taken. But, "[t]he choice of a remedy for a violation is 'within the sound judgment of the Commission, and not foreordained.'" Consumers Power Co. (Midland Plants, Units 1 and 2), DD-84-17, 10 N.R.C. 226, 231 (1984), quoting Petition for Emergency and Remedial Action, CLI-78-6, 7 N.R.C. 400, 406 (1978); see also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), DD-85-9, 21 N.R.C. 1759, 1771 (1985). Thus, show cause proceedings or other formal adjudicatory proceedings are inappropriate forums for resolving wholly discretionary matters like the extent of enforcement action to be taken.

Indeed, Commission case law recognizes that the purpose of the NRC's inspection and enforcement program is to identify problems and failures to comply with applicable requirements. It is common that deficiencies will be found as a result of such inspections. Corrective actions by the licensee that address the deficiencies and minimizes the likelihood of reoccurrence are what the Commission requires when violations are identified. See Duke Power Co. (Catawba Nuclear Station,

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Units 1 and 2), DD-84-16, 20 N.R.C. 161, 165-66 (1984). Contrary to the view apparently held by SECOM, license revocation or suspension is neither required nor appropriate simply because there have been violations of NRC requirements. See, e.g., Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1), DD-84-8, 19, NRC 924, 933 (1984); Washington Public Power Supply System (WNP Nos. 4 and 5), DD-82-6, 15 N.R.C. 1761, 1766 n.9 (1982). As the Director stated in Pacific Gas & Electric Co. (19 N.R.C. at 933):

The choice of enforcement sanctions for violations of NRC requirements rests within the sound discretion of the Commission, based on consideration of such factors as the significance of the underlying violations and the effectiveness of the sanction in securing lasting corrective action.

The thrust of the SECOM petition is that Detroit Edison has violated Commission requirements, that these violations have occurred frequently, and, as a result, the NRC can have no assurance that Detroit Edison will be able to operate the Fermi 2 plant safely in the future. Similar claims have been presented to the Commission in proceedings involving other nuclear plants and generally have been found inadequate because of the petitioners' failure to recognize corrective action that has been taken and changes in plant management that have been made. E.g., Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Unit 1), DD-84-21, 20 N.R.C. 788, 796-97 (1984). To succeed on such a claim, the petitioner bears the heavy burden of demonstrating that corrective action has been insufficient and that the NRC's ongoing inspection and enforcement program will be inadequate to monitor and detect any remaining concerns. Id. at 796-97; Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), DD-84-16, 20 N.R.C. 161, 165 (1984).

As described in the following two sections, the scope and effectiveness of the NRC's inspection program at Fermi 2 and the corrective actions and management changes made by Detroit Edison are sufficient to provide reasonable assurance that the Fermi 2 plant can be operated safely and without undue risk to the health and safety of the public. In such circumstances, instituting a show cause proceeding to review the matter is both unnecessary and inappropriate.

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III. The NRC Inspection and Enforcement Program at the Fermi 2 Plant

NRC issued Detroit Edison a fuel loading and low power license for Fermi 2 on March 20, 1985. That license was issued after extensive reviews of the operating license application by the NRC Staff and the Advisory Committee on Reactor Safeguards ("ACRS"). Hearings on the application had been held before an Atomic Safety and Licensing Board, a favorable decision rendered, and appellate review by an Atomic Safety and Licensing Appeal Board had been completed. See The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-82-96, 16 N.R.C. 1408 (1982), aff'd, ALAB-730, 17 N.R.C. 1057 (1983). Two requests for action under 10 C.F.R. § 2.206 had been denied by the Director of Nuclear Reactor Regulation; a third request filed after issuance of the low power license was denied by the Director of Inspection and Enforcement. See The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), DD-84-11, 19 N.R.C. 1108 (1984); DD-85-4, 21 N.R.C. 546 (1985); DD-85-13, 22 N.R.C. 454 (1985).

Before actual plant operations began, inspectors from NRC Region III had reviewed and assured themselves that Detroit Edison operating personnel and procedures were adequate to safely operate Fermi 2. This inspection process included normal and augmented reviews to assess operational readiness, as well as evaluations made pursuant to the NRC's Systematic Assessment of Licensee Performance ("SALP") program.

In its SALP 5 Report, covering the period October 1, 1983 through September 30, 1984, the NRC rated Detroit Edison "Category 2" in those areas relating to plant operations, including Preoperational Testing, Radiological Controls, Security and Safeguards, and Operational Readiness. Such a rating means that "Licensee management attention and involvement are evident and are concerned with nuclear safety; licensee resources are adequate and are reasonably effective such that satisfactory performance with respect to operational safety or construction is being achieved."

In its SALP 6 Report, covering the period October 1, 1984 through June 30, 1985, in those areas again relating to plant operations, the NRC rated Detroit Edison "Category 1" for Fueling and Preoperational and Startup Phase Testing, and "Category 2" for Plant Operations, Radiological Controls, Maintenance, Surveillance, Security, and Quality Programs and

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Administrative Controls. The Category 1 ratings mean that "Licensee management attention and involvement are aggressive and oriented toward nuclear safety; licensee resources are ample and effectively used so that a high level of performance with respect to operational safety or construction is being achieved."

Initial criticality of Fermi 2 was achieved on June 21, 1985. During the late evening and early morning of July 1 to 2, while the plant was beginning its third startup sequence, criticality was achieved prematurely. As a result of the premature criticality event, on July 16, 1985, NRC Region III Administrator James Keppler sent Detroit Edison a Confirmatory Action Letter. The purpose of the letter was to confirm that Detroit Edison would take five specific corrective actions to evaluate the premature criticality event and to assure that similar events would not reoccur. In addition, the Confirmatory Action Letter specified that Detroit Edison would obtain verbal concurrence from the NRC Region III Administrator, or his designee, prior to exceeding five percent (5%) reactor power.

Following the Confirmatory Action Letter, NRC inspection activities at the Fermi 2 plant became more intensive. On July 23, 1985, Detroit Edison made a presentation to Region III personnel describing the event, evaluating the safety significance and reportability of the event, and identifying the root causes and corrective actions being undertaken by the company. Detroit Edison's response to the Confirmatory Action Letter was submitted on September 5, 1985. It included a point-by-point response to the six items raised in the Confirmatory Action Letter, as well as an updated copy of the July 23 presentation reflecting the status of the corrective actions being undertaken. Detroit Edison made a further presentation to NRC Region III personnel on September 10, 1985. At that time a Reactor Operations Improvement Plan was described.

On August 18-20 and September 16-20, 1985, NRC inspectors performed a special, unannounced Operational Readiness Team review of the Fermi 2 facility. Five inspectors spent 110 hours onsite, including 20 hours during the backshifts. The purpose of this review was to evaluate the effectiveness of management controls over operations, the conduct of operations, the authority and responsibilities of operational personnel, and the methods used to accomplish shift turnovers, communications and recordkeeping. In addition, Detroit Edison's corrective

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actions taken in reponse to the Confirmatory Action Letter were reviewed. The results of this evaluation are reflected in NRC Inspection Report No. 50-341/85043, transmitted to Detroit Edison on November 8, 1985. In its report the NRC listed both licensee strengths and weaknesses, and no violations of NRC requirements were identified.

Additional NRC inspections dealing with the premature criticality event and with other plant operational issues have been undertaken. Summarized below are four of those inspections.

Between July 1 and October 15, 1985, the Fermi 2 resident inspectors conducted a special, unannounced review of various operational activities. Two hundred forty-six hours were spent onsite by three inspectors, including 77 hours during the backshifts. The results of their review are presented in NRC Inspection Report No. 50-341/85040, transmitted to Detroit Edison on January 7, 1986. Twenty-six apparent violations (including multiple examples) were identified during the inspection; nine of the violations dealt with the premature criticality event, the others related to events surrounding various plant operational matters. Specific enforcement action based on this inspection report has not yet been made known to Detroit Edison.

Between October 1 and November 30, 1985, two regional inspectors conducted a routine, unannounced review of plant activities. Two hundred ninety-seven inspector hours were spent onsite, including 52 hours during the backshifts. Areas inspected included LER reviews, operational safety verification, monthly maintenance observations, monthly surveillance observations, plant trip reviews, and other similar matters. Of the 12 areas reviewed, no violations or deviations were identified in 11 areas. One Level IV severity violation relating to the late submission of LER's was identified, but the inspectors concluded this violation had no impact on safety. The results of this inspection are reported in Inspection Report No. 50-341/85042, transmitted to Detroit Edison on December 31, 1985.

A similar routine, unannounced review of plant activities was conducted by two resident inspectors between December 1 and 31, 1985. One hundred ninety-two inspection hours were spent onsite, including 47 hours during the backshifts. Areas inspected included engineering design verification procedures,

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operational safety verification, monthly maintenance observations, monthly surveillance observations, emergency diesel generator repairs, and other similar matters. In the areas reviewed no violations or deviations were identified. The results of this review are contained in NRC Inspection Report No. 50-341/85048, transmitted to Detroit Edison on January 28, 1986.

Between November 12 and December 27, 1985, the NRC conducted an in-depth inspection of the security program at Fermi 2. This inspection was discussed with senior plant personnel on November 21 and December 13 and 19, 1985. Fourteen potential violations of NRC requirements were identified during this inspection. The results of this security program review are contained in NRC Inspection Report No. 50-341/85047, transmitted to Detroit Edison on February 11, 1986.

Based on these inspections, and on other ongoing reviews of Detroit Edison's activities at Fermi 2, the NRC became concerned over the growing number of apparent operational errors, degraded plant equipment and programmatic weaknesses. Accordingly, on December 24, 1985, NRC Region III Administrator Keppler sent to Detroit Edison a letter pursuant to 10 C.F.R. § 50.54(f) requesting that additional information be submitted under oath or affirmation to enable the NRC to determine whether or not the Fermi 2 license should be modified, suspended or revoked. Detroit Edison responded to this request in a letter dated January 29, 1986, from Walter J. McCarthy, Jr., Chief Executive Officer and Chairman of the Board of Directors. Detroit Edison's January 29 letter reiterated the company's commitment to the highest standards for managing and operating the Fermi 2 plant, and responded in detail to the NRC's information request. It identified a Nuclear Operations Improvement Plan, described the role of a newly-formed Independent Overview Committee, updated progress on the Reactor Operations Improvement Plan, and described those specific actions Detroit Edison would be taking prior and subsequent to restart of the Fermi 2 plant.

By letter dated March 7, 1986, the NRC acknowledged receipt of Detroit Edison's response to the 10 C.F.R. § 50.54(f) request, stated that no further written response would be required, indicated that it had received the initial report of the Independent Overview Committee, that it would like to meet with the committee prior to restart, and that it would like to meet with Detroit Edison monthly to monitor and evaluate the

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company's progress in implementing corrective actions. On March 12, 1986, the NRC Commissioners were briefed by the Staff, Detroit Edison, and two interested members of the public (including a representative from SECOM) on the status of the Fermi 2 plant.

Detroit Edison believes it undeniable that NRC inspection and enforcement activities have been especially intensive at the Fermi 2 plant. Since the premature criticality event on July 1, numerous inspections and enforcement meetings have been conducted. These inspection and enforcement activities have been supplemented by information submitted in response to the NRC's 10 C.F.R. § 50.54(f) request, and by NRC reviews of corrective action programs and evaluations developed by Detroit Edison, including the Reactor Operations Improvement Plan, a proposed Nuclear Operations Improvement Plan, and the initial report of the Independent Overview Committee. The allegations in SECOM's Section 2.206 petition are the result of this intensive NRC review focused on Fermi 2. Rather than evidencing a situation where formal adjudicatory proceedings are necessary to discover the facts, the SECOM petition itself demonstrates that existing NRC methods and procedures have been adequate to identify the problems and to cause Detroit Edison to develop appropriate corrective actions. The full scope and extent of those corrective actions are described next.

IV. Detroit Edison's Program to Improve Performance at the Fermi 2 Plant

In response to the problems experienced at the Fermi 2 plant, Detroit Edison has developed a number of far-reaching programs that address both short-term concerns and longer-term, more programmatic issues. The approach of the company is aptly captured in the opening remarks of Mr. McCarthy during the Commission's briefing on March 12, 1986. Mr. McCarthy there stated (Transcript at 61-62, 65-66):

[W]e [Detroit Edison] let you down and I'm very, very sorry about that. The incident, I think, that has caused the greatest concern in my professional life was the rod pull incident of July 1 [to] 2. I have carefully examined the incident itself. It was a very dumb thing for the Detroit Edison Company people not to have realized the sensitivity of that, whether or not it

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was a reportable incident or not. It should have been brought much higher than it was. * * * * That has poisoned the relationship between the NRC and the Detroit Edison Company ever since then and we are fighting our way to get out of that situation. And we will succeed.

* * * * *

We are doing lots of things. You have heard from Mr. Keppler about our reply to the 50.54(f) letter. We have, I think, focused the entire attention of the company upon the Fermi plant. And that starts with me. I, the Chief Executive Officer of the company, am now the person to whom the Vice President of Nuclear Operations reports. I spend, personally, three mornings a week at the Fermi plant and lots and lots of afternoons not at the Fermi plant but working on the Fermi plant. I do that because it is absolutely essential to the company that we get back to the standard that we had when I appeared before you last. We are going to do that. We have the people to do it. It's the same people, virtually, who were there. They're the people who got the plant done, who did the low power testing, and they can perform excellently again.

* * * * *

[T]he attention of this company is directed toward the safe operation of Fermi. We have no schedule, at the present time, for startup because the most important thing, I think, from our standpoint and also from the plant standpoint, is that when that start takes place that we do it right. I'm not in any hurry. I have said that publicly, a number of times. I've got to be convinced before we call up Region III and say we want to start up again.

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One part of the company's corrective action program is the Reactor Operations Improvement Plan. That plan was initially presented to the NRC at a meeting on September 10, 1985. The objective of the plan is to go beyond the corrective actions implemented following the Confirmatory Action Letter, and to develop short- and long-term programs in three general areas relating to management support of operations, shift management and administrative systems. The Reactor Operations Improvement Plan was formally transmitted to the NRC in a letter dated October 10, 1985. As described in that letter, Detroit Edison is implementing corrective actions in six broad areas:

1. Increased management support and operating staff effectiveness in control room
2. Improved communication practices
3. Improved administrative procedures and systems
4. Improved effectiveness of incident evaluation and corrective action process
5. Increased awareness of consequences of errors and strengthened accountability
6. Reduced number of equipment repairs and modifications being worked at any one time

The company has identified criteria for measuring the effectiveness of the program and specified an independent verification of implementation by the Nuclear Quality Assurance organization.

On November 8, 1985, the NRC acknowledged receipt of the Reactor Operations Improvement Plan, concluded that the plan "contains the appropriate attributes which, if properly implemented, should achieve the desired results," and requested Detroit Edison to provide specific quantitative criteria that could be used for measuring the effectiveness of the plan. Those quantitative criteria were provided on November 27, together with graphical information showing that during the three month period between September and November 1985 positive trends were established indicating that Fermi 2 is approaching the desired level of performance.

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As previously noted, in response to the NRC's request for information pursuant to 10 C.F.R. § 50.54(f), Detroit Edison is developing an even more broadly-based corrective action program, which is referred to as the Nuclear Operations Improvement Plan. This plan is in addition to the Reactor Operations Improvement Plan and is intended to "strengthen the sensitivity, discipline and responsiveness of the Nuclear Operations organization" by addressing "planning, accountability, attitude, communications, teamwork, follow-up and training in the entire organization." See January 29, 1986 letter from McCarthy to Keppler at page 2. The Nuclear Operations Improvement Plan will be initiated no later than May 1, 1986, and will be fully implemented by July 1, 1986.

An integral part of the overall program for improvement at Fermi 2 includes the formation of an Independent Overview Committee ("IOC"). The IOC is composed of recognized experts in the nuclear industry. Its purpose is to provide Detroit Edison management and the Board of Directors with an evaluation of operations at the Fermi 2 plant and an assessment of performance of the Nuclear Operations management. The IOC is to provide advice concerning changes in management, management systems or structures, and in the operation of Fermi 2. The initial report by the IOC was forwarded to the NRC on February 10, 1986. Detroit Edison has committed to implement corrective action with respect to the six recommendations contained in the report and also to address the concerns identified by the IOC as the underlying factors which are the basis for the committee's recommendations. The IOC also will review the Reactor Operations Improvement Plan, evaluate performance against that plan, advise about the company's plans to restart Fermi 2, evaluate plant operations, and make recommendations to management about increasing reactor power beyond five percent.

In addition to establishing the IOC, Detroit Edison has made a number of significant changes in its management structure. Mr. McCarthy, as Chief Executive Officer and Chairman of the Board, has taken direct responsibility for the safe operation of the Fermi 2 plant. A new Vice President, Nuclear Operations reports directly to Mr. McCarthy. The company is actively seeking additional senior management candidates with commercial nuclear experience from outside the company. Mr. McCarthy has directed Charles M. Heidel, President and Chief Operating Officer, to assist him in monitoring the performance of Nuclear Operations; the Nuclear Quality Assurance organization reports directly to Mr. Heidel in this regard.

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The Nuclear Engineering and Nuclear Production departments are developing additional methods and procedures to further clarify responsibilities and work priorities and to better improve communications. Management systems and practices are being reviewed and evaluated to assure better planning, coordination and completion of work activities. Similarly, plant maintenance activities are being reviewed with special attention on post-maintenance test requirements and methods for removing and placing into service critical plant equipment. A Security Improvement Plan has been developed, and on January 17, 1986, the major elements of the plan were presented to the NRC Staff. The plan seeks to improve the security program by correcting adverse trends, clarifying security responsibilities, improving personnel understanding of the security plan and implementing procedures, and implementing a management system to track required surveillances.

Taken together, these initiatives by Detroit Edison, as more fully described in correspondence and meetings with the NRC Staff, provide an aggressive plan for correcting past problems and maintaining operations at Fermi 2 at the highest levels of safety. The program is responsive both to the specific problems identified by the NRC Staff and to the underlying factors which have caused the problems. Substantial resources both within and outside the company are being brought to bear to better assure the success of the program.

Significantly, in its petition SECOM presents no facts and no serious argument as to why these corrective actions will not be adequate to ensure the public health and safety. SECOM nowhere addresses the Reactor Operations Improvement Plan or the Independent Overview Committee. In essence, SECOM's argument is that there have been problems at the Fermi 2 plant and no amount of corrective action can be sufficient to assure safe operation in the future.*/ That claim is reckless and without any factual support. It is inconsistent with the fundamental objective of NRC enforcement policy which is that violations of requirements should be followed by corrective actions aimed at avoiding similar violations in the future. In short, SECOM

*/ Indeed, the SECOM representative who addressed the Commission at its March 12, 1986 briefing on Fermi 2 readily conceded that in the group's view "this plant can never operate safely" and that SECOM "object[s] to the technology being used to generate electricity" at Fermi 2. Transcript at 45.

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offers no constructive criticism of Detroit Edison's broad-based improvement plans.

V. Evaluation of the
SECOM Petition

Detroit Edison's belief that the SECOM petition seeking show cause proceedings should be denied rests on two fundamental propositions.

First, the Fermi 2 plant has been subject to intensive NRC scrutiny during the past nine months which has disclosed a number of problem areas. The SECOM petition merely repeats back to the NRC findings disclosed by the company or matters already known to the NRC. In such circumstances, a show cause proceeding to review yet again what already has been disclosed as a result of ongoing NRC inspection and enforcement proceedings is unnecessary and inappropriate.

Second, Detroit Edison has responded promptly and forcefully to the identified deficiencies. The improvement plans currently being developed and implemented are intended to ensure that past problems have been corrected and to minimize the likelihood that future problems will arise. SECOM offers no credible reason for challenging these conclusions and the NRC can itself properly assess the adequacy of Detroit Edison's corrective actions without convening a show cause proceeding.

The review of the NRC inspection and enforcement program set forth in Section III above and the description of the Detroit Edison improvement plans set forth in Section IV above fully support the conclusions just drawn. We briefly respond to SECOM's five "allegations" below.

1. Lack of "elevated" enforcement action by the NRC. Contrary to SECOM's allegations, the NRC has intensively inspected operations at the Fermi 2 plant and has taken aggressive enforcement action against Detroit Edison. No legitimate enforcement policy would now be served by initiating a show cause proceeding that would be a mere rehash of already completed NRC inspection activities. Nor has SECOM in any way supported the need for the type of "elevated" enforcement action -- i.e., license revocation or suspension -- that it suggests.

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2. Lack of Detroit Edison management controls. Detroit Edison recognizes that management performance at Fermi 2 could and should have been better. But that alone is no reason to initiate a show cause proceeding. The company has expended substantial resources to identify the problems, develop improvement programs, and implement the necessary corrective actions. Region III has reviewed Detroit Edison's initiatives and believes that if properly implemented they will be sufficient to correct the identified problems.

3. Willful violation of NRC requirements. SECOM's claim that Detroit Edison has willfully violated NRC requirements by showing a careless disregard for those requirements is nothing more than a bald, unsupported statement. SECOM can marshal no facts or even argument to support such a conclusion. The claim is refuted by an unbiased review of Detroit Edison's entire enforcement history. NRC evaluations of the company, like those in the SALP 5 and 6 Reports confirm this fact. The quantitative performance factors now being tracked by the company also confirm that the company does not have a careless disregard for NRC requirements. In any event, there is no need to convene a show cause proceeding to determine if Detroit Edison has acted willfully. That could be determined without hearing on the basis of the facts alleged by SECOM.

4. Inability of Detroit Edison to comply with NRC requirements. While recognizing that past performance at the Fermi 2 plant can be improved it is totally incorrect to conclude that the problems experienced at the plant demonstrate a total inability to comply with NRC requirements. The special operational readiness review conducted by the NRC in August and September 1985 found no violation of NRC requirements. The routine inspection during December 1985 similarly found no violations. SECOM's argument clearly overstates the record and is without any factual support.

5. Detroit Edison's improvement plans are inadequate. The sole support for this claim are selected bits-and-pieces of third-party audits of Detroit Edison conducted during the construction phase of the Fermi 2 project. This provides no basis for concluding that the substantial corrective actions now being undertaken by Detroit Edison will be inadequate to resolve the identified problems. SECOM nowhere addresses any specific part of Detroit Edison's improvement plans and identifies not a single weakness in the plans. The NRC can effectively monitor the implementation of the improvement plans

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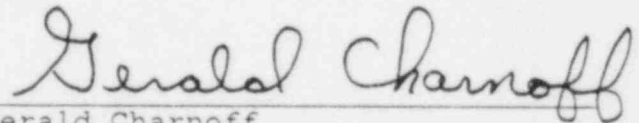
and determine for itself whether they are adequate to correct the problems. In such circumstances, little purpose would be served by instituting a show cause proceeding to duplicate this Staff effort.

* * * * *

For all the foregoing reasons, the SECOM petition seeking the commencement of show cause proceedings should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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