UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF INSPECTION AND ENFORCEMENT

James M. Taylor, Director

In the Matter of

DETROIT EDISON COMPANY (Fermi-2)	))	Docket No. 50-341 (10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR §2.206

INTRODUCTION

By petition dated February 15, 1986, supplemented by letter dated March 28, 1986, Ms. Jennifer Puntenney, on behalf of the Safe Energy Coalition of Michigan (SECOM or Petitioner), filed a request pursuant to 10 CFR 2.206 and 10 CFR 2.202 with the Director, Office of Inspection and Enforcement, the Director, Office of Nuclear Reactor Regulation, and the Regional Administrator, Region III. SECOM requested that the Commission take immediate action to require Detroit Edison Company (DECo or licensee) to show cause why its license to operate Fermi-2 should not be revoked on the basis of five allegations contained in the petition. See Petition at 2. Notice of receipt of the request was published in the Federal Register. 51 Fed Reg 11372 (April 2, 1986). The request was referred to the Office of Inspection and Enforcement for response since the information presented by SECOM as the basis for its request relates principally to matters normally handled by that office. By letter dated March 26, 1986, I advised SECOM that while I had determined that immediate action was not warranted, I would respond to the petition within a reasonable time. I acknowledged receipt of SECOM's March 28, 1986 supplement

to the petition in a letter dated April 29, 1986. By letter dated March 28, 1986, the licensee responded to the SECOM petition. For the reasons set forth below, I have determined that the petition should be denied.

BACKGROUND

Fermi-2 is a 3292 MWth (1154 MWe) boiling water reactor located in Newport, Michigan. The licensee received a construction permit from the Atomic Energy Commission (AEC) in 1972 in accordance with the Atomic Energy Act and AEC regulations. Following the completion of construction, the licensee was authorized on March 20, 1985 to operate the facility at power levels not to exceed 165 megawatts (5%) and a full power license was issued by the NRC on July 15, 1985. However, on July 16, 1985, as a result of the rod pull error in the control room that occurred on July 1-2, 1985, the Region III NRC staff (Region III) issued a Confirmatory Action Letter specifying that DECo would obtain verbal concurrence from the Region III Administrator or his designee prior to exceeding 5% power.[1]

The NRC had considered the licensee and its management team to be good performers in most areas of regulatory significance during the construction phase of the project and the Fermi-2 management team was thought to be ready to operate the facility adequately at the time of low power licensing (see Systematic Assessment of Licensee Performance (SALP) Reports: 50-341/82003, March 3, 1982; 50-341/83013, June 29, 1983; 50-341/83032, February 6, 1984;

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1 Since October 1985 the facility has been shut down for the purpose, in part, of making the improvements and conducting the reviews described in this decision.

50-341/84023, December 26, 1984; and 50-341/85027, September 11, 1985). Since issuance of the low-power license, however, the licensee's performance, particularly the adequacy of its management controls, became a matter of increased concern to the NRC. The licensee's deficient regulatory performance is documented in NRC Inspection Reports 50-341/85040, January 7, 1986, 50-341/85042, December 31, 1985, and 50-341/85047, February 11, 1986, and in numerous licensee reports submitted to the Commission pursuant to 10 CFR 50.73 (Licensee Event Reports or LERs).

The NRC recognized the significance of its Fermi-2 inspection findings and the pattern and significance of the LER root causes and in addition to its routine inspection activities, took other regulatory actions intended to bring about improvements in DECo's performance. Problems continued to surface in other areas and the NRC issued a letter pursuant to 10 CFR 50.54(f) on December 24, 1985 which required the licensee to address significant NRC concerns about the adequacy of licensee management systems and controls in the areas of engineering, operations, security, and maintenance. The purpose of the letter was to require the licensee to submit information to the NRC to determine whether action to modify, suspend, or revoke the operating license was necessary. The licensee responded to the 50.54(f) letter on January 29, 1986. Thereafter, the petition was filed.

The petition primarily relied on the 50.54(f) letter, inspection reports, and the LERs described above. Other than the information associated with the Michigan Public Service Commission Staff Report, 1984, the information presented in the petition was known by the staff. The information forming the basis for the petition is essentially the same information which formed the basis for the NRC staff's actions in this matter.

With this background in mind, it is now appropriate to address each of the Petitioner's allegations.

PRINCIPAL ALLEGATIONS RAISED BY PETITIONER

I. THE ATOMIC ENERGY ACT AND NRC REGULATIONS MANDATE LICENSE REVOCATION

SECOM's first allegation concerns a perceived inadequacy of the NRC's enforcement actions to date regarding Fermi-2. In particular, Petitioner asserts that the NRC has not elevated the enforcement actions against the licensee to the levels mandated by the Atomic Energy Act of 1954, as amended (Act), particularly Section 186, and the Commission's General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, (Enforcement Policy). The Petitioner quotes Section 186a. of the Act, 42 U.S.C 2236a., which authorizes the Commission to revoke licenses under certain circumstances, as well as language in the Enforcement Policy which describes the Commission's broad and extensive enforcement options. Based on its reading of the Act, the NRC Enforcement Policy, and its assessment of Fermi-2's performance, SECOM argues that it is necessary to revoke Fermi-2's operating license. See Petition at 2, 4, and 5.

I agree with the Petitioner's general assessment of the scope of enforcement options available to the Commission in the exercise of its regulatory responsibilities. However, it must be recognized that the bare legal authority to revoke licenses does not mandate that this authority be used indiscriminately; appropriate enforcement action in a given situation requires careful consideration of the particular facts and circumstances involved.

The Commission has long recognized that both the Atomic Energy Act and the NRC regulations support the conclusion that the choice of remedy for a regulatory violation is within the sound judgment of the Commission, and not preordained. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978). As the Commission stated in that decision:

> It goes without saying that a violation posing an undue risk to public health and safety will, of course, result in prompt remedial action, including shutdown if necessary. In other instances, however, the Commission has a wide spectrum of remedies for dealing with violations of regulations. These include show cause proceedings and proceedings for civil monetary penalties. The choice of appropriate mechanism for correction of an assumed violation rests within the sound discretion of this agency. In exercising this discretion, our paramount concern is with the public health and safety. (citation omitted) Ibid.

Accordingly, to the extent SECOM suggests that the Commission must apply its enforcement policy in a mechanical fashion, the allegation is without merit. The particular issue raised by the Petitioner is whether license revocation is appropriate in this case. Thus, I must consider whether the other bases SECOM asserts mandate license revocation. These bases are addressed below.

II. INADEQUATE MANAGEMENT CONTROLS

SECOM's second allegation is that a continuing lack of management controls has resulted in ineffective programs and incompetence in the licensee's operations, maintenance, security, and engineering activities. Petition at 2. SECOM cites three principal bases for the allegation: (1) 26 violations identified in Inspection Report 50-341/85040; (2) 80 LERs submitted since March 1985; and (3) NRC's December 24, 1985, 50.54(f) letter. Petition at 6 and 7.

SECOM's basis for this allegation rests entirely on matters that have surfaced as a result of NRC's inspection and regulatory programs. The findings from these programs indicated unacceptable performance by the licensee and have resulted in the need for comprehensive licensee action. This was emphasized by the NRC in Mr. Keppler's December 24, 1985 50.54(f) letter to the licensee, quoted in pertinent part by the Petitioner. See Petition at 6. However, since the issuance of the 50.54(f) letter, NRC staff concerns with operations, maintenance, security and engineering activities have been adequately addressed by this licensee and actions have been taken such that I have reasonable assurance that the regulatory concerns have been satisfactorily resolved. In the NRC staff's view, operation of Fermi-2 will not create a substantial safety issue meriting license revocation.

Each of these concerns are discussed below.

a. Operations

The NRC's concerns with the licensee's management system and control of its operations activities are documented principally in Inspection Report 50-341/85040. That report identified 26 potential violations of NRC requirements occurring between June 20, 1985 and September 2, 1985. Several of the potential violations concerned an event involving a rod pull error which occurred in the control room on July 1-2, 1985, and which was of significant concern because it demonstrated a lack of management control and attention to detail by control room personnel. This event resulted when a reactor operator improperly positioned 11 control rods to the full out position rather than to an intermediate position as required. He had not been supervised or observed properly by several

management, supervisory, and operations advisory personnel who were in the control room area at the time.

On July 3, 1986, after consultation with the Commission and consideration of the report of the Office of Investigations regarding this matter, I issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $300,000 based on three violations that reflected the breakdown of management controls and discipline in the control room for that event. I also issued an immediately effective Order Modifying the License which requires 1) that the licensee demonstrate that the Nuclear Shift Supervisor involved in the incident has been retrained and reexamined before he is allowed to resume licensed responsibilities in the control room and 2) that the licensee develop and implement a control room audit program to further assure that activities in the control room are conscientiously carried out. These as well as the licensee's other actions should provide reasonable assurance that control room operations will be in compliance with Commission requirements.

The remaining potential violations, although falling short of involving high actual or potential impact on the public, are a cause for significant concern. The root cause of many of these potential violations appears to be inadequate work control measures. The issues were also symptomatic of the management weaknesses that led to the July 1-2, 1985 rod pull error. The NRC has taken appropriate enforcement action regarding the remaining potential violations. In a separate action today, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $75,000 was issued based on violations involving 1) the failure to provide a flow path during the period July 23-29, 1985 for the Emergency Equipment Service Water system, 2) breaches of containment integrity during the period June 21 to September 2, 1985 involving a containment monitoring system valve and failure to perform leakage tests on

the hydrogen recombiner, and 3) inoperability of a room cooler for the Reactor Core Isolation Cooling/Core Spray System from July 23-24, 1985. Because these violations were symptomatic of the management weaknesses that led to the July 1-2, 1985 rod pull error, occurred during the same time period, and the licensee has taken extensive actions to correct the causes of the violations, some of which are described below, the possible base civil penalty of $150,000 for the three violations was mitigated 50%. I am satisfied that the corrective actions described below properly address the concerns raised by these violations.

As a result of the inspection findings and subsequent meetings with the NRC, the licensee agreed to develop a corrective action program, called a Reactor Operations Improvement Plan (ROIP), to minimize further operational problems. The ROIP was formally transmitted to the NRC on October 10, 1985. The NRC findings indicated that a significant weakness existed in the licensee's overall management of control room operations. Therefore, the corrective actions formalized in the ROIP focus in large part on improving control room operating conditions and communications. Sixty-two of the sixty-four commitments that flowed from these corrective actions are now complete. (The remaining two commitments, neither of which is a significant safety concern, are ongoing and involve long-term efforts to further improve, clarify, and refine administrative procedures.) The plan also contains six parameters which are tracked as indicators of plant performance. These parameters contain "trigger points" called Management Attention Levels (MALs) which, if exceeded, will alert management to the need for further attention in the particular area of the increase. Region III has reviewed the ROIP and in a letter dated November 8, 1985, informed the licensee that it was acceptable.

SECOM also notes that the licensee submitted more than 80 LERs since low-power licensing. There actually were a total of 83 LERs submitted by

Fermi-2 in calendar year 1985. LERs are not necessarily an indication of the performance of a licensee or the condition of a facility. However, the licensee appears to have made progress in reducing the number of events requiring LERs. From January 1, 1986 to June 30, 1986, the licensee issued 16 LERs. Even though the plant has been shut down during that time period and one would expect fewer LERs, the trend may be improving.

The licensee's January 29, 1986, response to the 50.54(f) letter provides additional support for the conclusion that the licensee has improved and will further improve operations activities. Among other things, the licensee has formed an Independent Overview Committee (IOC) comprised of nuclear industry consultants with a broad range of management and operating experience. The IOC meets approximately monthly and provides DECo management with a critique of the Fermi-2 management and operations. On January 30, 1986, the IOC made six recommendations which, in its opinion, would improve the organization and management of Fermi-2. The six recommendations were: (1) hire an experienced senior manager, (2) provide an advisor with operations experience to the Vice President, (3) emphasize the need to support the Plant Manager, (4) establish performance goals with yardsticks, (5) reorganize the Nuclear Engineering Department, and (6) hire an experienced senior security manager. DECo committed to adopting all of the recommendations and has completed the first five. With regard to the sixth recommendation, an oral offer has been made to and accepted by a qualified person for the senior security manager position.

In addition, since January 1, 1986, more than 50 new employees have been added to Nuclear Operations. Fifteen of these new employees have had commercial operating experience including a Group Vice President.

The IOC also will monitor plant operations activities including implementation of the new Nuclear Operations Improvement Plan. This Nuclear Operations

Improvement Plan was submitted to Region III on May 9, 1986, and is in addition to and broader than the Reactor Operations Improvement Plan submitted on October 10, 1985. It was developed to address planning, accountability, attitude, communications, teamwork, follow-up, and training in the entire organization.

In addition, the IOC has conducted a review of the readiness of Fermi-2 to restart and met with the NRC on June 3, 1986 to discuss its review and conclusions regarding the restart. Another such meeting is scheduled prior to restart. Finally, the committee will review and provide any necessary advice to DECo management concerning startup tests and up to and including full power operation.

Since implementation of the ROIP, Region III has issued at least six inspection reports covering Fermi-2 operations activities since October 1, 1985. Even though Fermi-2 was shut down for nearly all of this period, work activities and surveillances still were performed which required adherence to procedures. Only three violations regarding operations type activities, none of which were significant, were identified during these inspections. This further demonstrates that the corrective actions taken in response to the issues raised in Inspection Report 50-341/85040 have been effective to date.

Based on the above, I conclude there is reasonable assurance that Fermi-2 management is controlling adequately operations activities such that the activities will not present an undue risk to the public health and safety after the plant is restarted.

b. Maintenance

NRC concerns with the licensee's management system and control of its maintenance activities also arose from the potential violations identified in

Inspection Report 50-341/85040. The concern, though less substantial than the concern with operations activities, was that in several instances the NRC believed that inadequate maintenance was a contributing cause to some of the potential violations.

In its response to the 50.54(f) letter, DECo also addressed the maintenance problems and stated that two areas of maintenance needed improvement: post-maintenance test requirements, and techniques for removing and placing into service critical plant equipment. The NRC had described examples of these problems in Inspection Report 50-341/85040. In one case described in the report, a post-maintenance leakage test was not completed on the hydrogen recombiner. In another case, a containment monitoring system valve, which is a primary containment boundary, was found in the open position and uncapped. It apparently had been that way for several months. See Inspection Report 50-341/85040 at 12 and 13. As discussed above, the NRC has taken appropriate enforcement action for these violations.

To correct these problems the licensee has modified the work order process to state more clearly the post-maintenance requirements. Additional documentation requirements also have been added which must be met before the shift operating authority can accept a component or system for service. Instrument and repair technicians have been provided additional training and received specific on-the-job instructions regarding proper techniques to be used.[2] Inspections by resident inspectors into these problem areas subsequent to the implementation of the corrective actions have not identified any recurring problems.

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2 The utility also has elected to monitor two items as indications of maintenance workload. These are the number of open work orders and the number of improperly annunciating alarms in the control room. Trigger points have been established in each of these areas which, if exceeded, will alert upper management to the need for further attention in the problem area.

Based on the above, I conclude that there is reasonable assurance that Fermi-2 management is controlling adequately maintenance activities such that the activities will not present an undue risk to the public health and safety after the plant is restarted.

c. Security

NRC concerns with security were documented in Inspection Report 50-341/85047 which concerned an NRC team inspection which identified 13 potential violations of the NRC-approved security plan as well as several findings that did not amount to violations. The team identified a lack of management effectiveness in a number of areas, such as lack of a detailed understanding of the security plan by security managers, lack of effectiveness or aggressiveness by them in resolving adverse trends, and a lack of general management support for the security program.

The findings in Inspection Report 50-341/85047 resulted in issuance of a proposed civil penalty of $50,000 against the licensee on May 20, 1986. In a letter dated June 19, 1986, the licensee paid the proposed civil penalty and submitted a written explanation and corrective actions regarding the violations.

The findings in Inspection Report 50-341/850 7 made it apparent that DECo had difficulty in identifying and resolving security concerns, although in the past DECo had demonstrated the ability to take appropriate and prompt corrective actions once problems were identified. As a result, DECo was directed in the 10 CFR 50.54(f) letter to respond to the security concerns. Formal corrective action has been addressed in a security Performance Improve-

ment Plan (PIP) submitted by the licensee on May 1, 1986 and approved by Region III. The PIP, in addition to other items, addresses the following: (1) actions to improve understanding of the security plan and procedural requirements by security personnel, (2) actions to improve monitoring systems to assure compliance with security requirements, (3) actions to increase management effectiveness/aggressiveness in reducing adverse trends, and (4) actions to more clearly define security responsibilities. The licensee's implementation of the security PIP has been monitored during inspections conducted in May, June, and July and the licensee's performance is adequate. Additionally, DECo has taken the following actions to improve its security organization.

1. The licensee has reorganized the primary security staff and effected changes in the uniformed force to improve the level of supervision and management attention provided to the security program. To address the recommendation by the IOC regarding security experience, several experienced candidates have been interviewed for a senior security management position and an oral offer has been made to and accepted by a qualified person for the senior security manager position. The position of Chief, Nuclear Security already has been filled on a permanent basis by a qualified person.

2. The licensee is initiating a comprehensive and aggressive audit/surveillance program to assure that the site security program is being implemented properly and that the security program meets an acceptable level of protection as defined in the security plan. This program will audit all phases of the security program. The initial program surveillance was completed in early July 1986. Followup surveillances are scheduled and

the licensee's Nuclear Quality Assurance department has scheduled an audit of the security program by September 1986.

The NRC inspection program has also evaluated the ability of the security force to implement effectively the security plan. Since October 1984, our inspection efforts have shown, despite the identified management weaknesses, that the security force has continued to provide an adequate level of protection to the facility even though some violations involving the uniformed guard force have been noted.

NRC staff evaluation, based on the most recent security inspections, verified that the licensee's uniformed guard force has sufficient staffing levels and resources to adequately implement the site security program. The licensee's site security management staff provides additional support to the uniformed guard force to implement the security program. While additional improvements are still needed, inspection results verified that the licensee had addressed identified violations and taken appropriate compensatory actions.

Based on the above, I conclude that there is reasonable assurance that Fermi-2 management is implementing adequately the NRC approved security program such that security activities will not present an undue risk to the public health and safety after the plant is restarted.

d. Engineering

NRC's concerns with DECo's management system and control of its engineering activities developed as a result of two issues identified prior to issuance

of the 50.54(f) letter regarding questionable or incomplete engineering reviews performed by DECo engineering and its Architect-Engineer (AE) contractors. The first issue was that seismic reviews had not been performed on Nuclear Engineering (NE) change documents (see Inspection Reports 50-341/85048 and 50-341/85052 dated January 28, 1986 and April 8, 1986). The licensee's evaluation of this problem concluded that all NE change documents which had been issued should be reviewed again because a DECo Engineering quality assurance audit revealed that no documented evidence of seismic reviews existed for 27 Engineering Change Requests. The second issue involved 45 embedded plates in the Reactor/Auxiliary Building that were potentially overstressed.

With regard to the first issue, the licensee determined that 1,995 NE change documents were affected by the lack of documentation and adequacy of seismic review. Of these changes, the licensee determined that 133 design changes on safety-related systems required further review. A seismic review then was performed and documented by the licensee. No hardware modifications were required to be made as a result of this review of the change documents. To prevent this from happening again, the licensee revised its design change control procedures to require a specific documented review by a Seismic System Engineer. To confirm the adequacy of the licensee's handling of this issue, Region III conducted a special safety inspection on December 2-5, and 17, 1985, January 13-16, and 21-23, 1986, February 4-6, 1986 and March 13, 1986. Region III reviewed a selected sample of the Seismic Design/Qualification Reports and concluded that the licensee's engineering judgements and analyses were properly verified. The results of this evaluation are documented in Inspection Report 50-341/85052, April 8, 1986.

With regard to the second issue, the licensee had Stone and Webster (S&W) reevaluate the hanger loads imposed on the embedded plates. The licensee also had Sargent & Lundy reevaluate and, where appropriate, reanalyze the embedments and supporting structural concrete using the redefined loads developed by S&W. All of the embedded plates have now been analyzed by the licensee and found to meet the allowable stresses for the latest system support loads. The licensee notified Region III on January 30, 1986, that no hardware modifications were required to be made as a result of the reevaluations or reanalyzes. The S&W reevaluations of the hanger loads imposed on the embedded plates were reviewed by the NRC during the special safety inspection noted above and were determined to have been performed in a controlled and correct manner and were properly verified. The results of this evaluation also are documented in Inspection Report 50-341/85052 and in Inspection Report 50-341/86012 which will be issued soon.

Following the issuance of the 50.54(f) letter, two additional engineering concerns developed. The first concern arose on January 31, 1986 when the licensee informed Region III that certain changes to the documented design that affected hanger design calculations and pipe stress reports issued after September 1, 1984 were completed without proper verification or without an adequate level of review. The licensee documented this problem in LER 86-002, dated March 1, 1986. The affected calculations were reviewed and updated to reflect design documents and the plant as-built conditions. Procedures were implemented to assure calculations are updated/completed at the time of plant modifications. Seven Deviation Event Reports were written as a result of this review and calculation update and the resulting corrective actions/modifications are in process and will be resolved before Fermi-2 restart.

The licensee retained S&W to perform an overview of the process for determining whether Fermi-2 design documents are complete and current. The effort included audits of the reverification of Engineering Design Packages and associated design change documentation and an evaluation of the Core Spray System to determine if required design documents exist and are current. S&W concluded that engineering and design activities of Fermi-2 were satisfactory in that they were conducted in a conventional manner and that the criteria and design requirements were appropriately addressed for the engineering activities reviewed.

Region III reviewed the DECo Design Calculation Reconciliation Program (DCRP) and pertinent procedures, a sample of small bore and large bore piping and pipe support and mechanical system calculations, and the S&W overview of engineering and design activities. The review concluded that the DECo DCRP and procedures were adequate, effectively implemented, and that the S&W conclusion was justified with the exception of the small bore piping design. Regarding this issue, DECo conducted a detailed review of the small bore design calculations versus the actual as-built configurations. Although extensive upgrading of the base calculations were necessary, no hardware modifications were required. The results of this review will be documented in Inspection Report 50-341/86012.

The second concern resulted from an allegation that an embedded plate supporting a portion of a non-safety-related system pulled away from the structural concrete when the anchor bolts failed. The licensee's investigation revealed that the embedment which failed did not use anchor bolts but was attached to the structural concrete using studs welded to the embedment. The licensee's investigation also revealed that the major cause of this failure was defective stud welds. Further review by the licensee revealed that 251 of

these non safety-related embedments were manufactured by the same vendor. Of this total, 234 of these embedments support safety-related cable trays and are installed in safety-related areas of the Reactor/Auxiliary Buildings.

The licensee's evaluation included ultrasonic examination of portions of 59 of the embedments in question. A sample of 21 embedments were chosen for load testing. The embedments were selected based on stress levels and the presence of significant ultrasonic reflections. The embedments in the sample were tested with a static load equivalent to the Operating Basis Earthquake. All embedments passed the static load test and no modifications were required.

Region III reviewed the embedment testing program, observed selected testing, examined certain of the test data, and concluded that the program had been adequately and effectively implemented. The results of this review will be documented in Inspection Report 50-341/86012. Based on this test program, the NRC staff has reasonable assurance that the embedments are acceptable.

The NRC believes that the engineering problems described above resulted from a lack of proper management controls, lack of attention to details and inappropriate management decisions. The DECo IOC Report dated January 30, 1986, confirmed this view. To correct the problem, DECo currently is seeking a senior individual with extensive nuclear experience to fill the newly created position of Vice President - Nuclear Engineering. The Company also has replaced or is in the process of replacing some key management personnel in the engineering organization. These changes should improve the overall performance of the engineering organization. In addition, it is important to recognize that although some of these problems were the result of questionable or incomplete engineering analyses/evaluations, only a few hardware changes had to

be made as a result of these reverifications. Region III will continue to monitor these activities closely until final resolution.

Based on the above, I conclude that the past problems related to design changes and modifications have been identified and adequately resolved and that there is reasonable assurance that Fermi-2 management is adequately controlling engineering activities such that the activities will not present an undue risk to the public health and safety after the plant is restarted.

e. Key Elements Of Licensee's Corrective Acti n Program

The licensee's corrective action program is comprehensive, consisting of at least six key elements which are summarized below.

1. Nuclear Operations Improvement Plan (NOIP) - this is a plan, broader than the ROIP, developed to address planning, accountability, attitude, communications, teamwork, follow-up, and training in the entire organization. The plan was reviewed by the IOC, initially implemented on May 1, 1986, and fully implemented on July 1, 1986.

2. Management changes - a new Vice President of Nuclear Operations was appointed February 1, 1986 and a Group Vice President with nuclear operating experience was hired from outside the company to provide additional nuclear experience.

3. Independent Overview Committee - the company retained a group of nuclear industry experts with management and operating experience to provide DECo corporate management with an evaluation of the Fermi-2 operation. The Committee provides advice concerning management and operation of the plant, will monitor the actions required for the licensee to meet the NOIP, and will recommend modifications as appropriate. It initially made six recommendations which DECo adopted. In essence, the committee will provide an oversight function at Fermi-2.

4. Performance Improvement Plan - this was developed to address the security plan violations which occurred in the last quarter of 1985. The plan includes elements for both short term and long term corrective actions.

5. Maintenance Activities - an evaluation of this area indicated two areas for improvement, post-maintenance test requirements and techniques for removing and placing into service critical plant equipment. Procedures have been modified to improve these areas. Also, in the ROIP the licensee has committed to tracking parameters, such as open work orders and problem alarms, which can be indicators of maintenance problems.

6. Readiness for restart - specific actions have been or will be taken before restart including: the IOC will review readiness of personnel and equipment; the operators responsible for reactor startup will have recently conducted reactor startup evolutions on the simulator; a list of specific tasks which must be completed before restart has been identified and is

being tracked by DECo and the NRC. All of these actions are being done to assure that plant equipment is operable and personnel are ready to operate the plant.

f. Other Considerations

NRC Region III will conduct an augmented onsite inspection at Fermi-2 during reactor restart. The inspectors will verify that there are no outstanding items which would prevent restart and there will be an increased NRC presence in the control room during reactor startup and during critical startup phase tests. The inspectors will directly observe performance of the operators to confirm that procedures are properly followed; that shift turnovers are thorough; and, in general, that control room discipline is maintained and focused on the management of all control room activities.

Prior to the startup the NRC staff will focus on plant equipment to verify that systems required for operation have been checked out and declared operational by the licensee using proper and approved procedures, that all important modifications have been completed and proper training conducted, that all applicable licensee commitments have been satisfied, (for example, that the reactor operators actually performing control rod manipulations will recently have completed similar start-ups on the reactor simulator), and, in general, that the plant physically is ready to operate. The recommendation for restart will be made by the Restart Team Director, who will be an NRC manager, to the Region III Regional Administrator. Additionally, the resident inspectors will conduct daily followup of any significant observations. This effort will also include verification that the licensee has completed all of the actions stated in

Attachment 4, "Actions to Insure Readiness for Reactor Restart," to its January 29, 1986, letter to Mr. Keppler.

g. Summary

SECOM has alleged that lack of management controls at Fermi-2 has resulted in ineffective programs in operations, maintenance, security, and engineering activities. The NRC agrees that problems existed in these areas. In fact, as SECOM notes in its petition, the Regional Administrator, Region III, was quite explicit in his criticism of Fermi-2 management. Petition at 6 and 8.

The NRC assessment of the licensee's resolution of the concerns has been discussed above. The licensee's plan addresses the NRC staff's concerns and provides solutions and comprehensive corrective actions. Furthermore, Region III will continue to monitor the progress of DECo in implementing the plan. In addition the NRC staff has taken the extraordinary measure of establishing an NRC team to augment onsite inspection at Fermi-2, including increased NRC presence in the Fermi-2 control room during reactor startup. I conclude, therefore, that there is reasonable assurance that Fermi-2 management is adequately controlling operations, maintenance, security, and engineering activities such that the activities will not present an undue risk to the public health and safety after the plant is restarted.

III. THE VIOLATIONS IDENTIFIED IN INSPECTION REPORT 85-040 SHOWED CARELESS DISREGARD FOR REQUIREMENTS

SECOM's third allegation is that the twenty-six potential violations identified in Inspection Report 50-341/85040 were willful within the meaning of

the Enforcement Policy in that they showed careless disregard for requirements. Petition at 3. Petitioner claims further support for its contention that the violations showed careless disregard in Mr. DuPont's January 3, 1986, memorandum concerning his review of Fermi-2 LERs. Petition at 13. However, SECOM articulates no basis for its view beyond its conclusionary assertion that these potential violations evidence careless disregard.

In response to this allegation, as discussed elsewhere in this decision (Sections II and IV) NRC has evaluated the violations identified in Inspection Report 50-341/85040 and the matters discussed in the memorandum from Mr. S. DuPont, Reactor Inspector, Test Programs Section, Division of Reactor Safety, Region III, dated Januarv 3, 1986 (DuPont Memorandum) cited in the SECOM petition. As discussed previously in my response, the licensee's performance, particularly the adequacy of its management controls in certain areas of regulatory importance, was a matter of serious concern to the NRC. The NRC recognized the significance of its Fermi-2 inspection findings and the LERs and in addition to its routine inspection activities, took other regulatory actions, including enforcement action, intended to bring about improvements in DECo's performance. In the NRC staff's view, the licensee's actions described in the petition were unacceptable. However, they do not establish that the licensee acted with careless disregard. The NRC staff does not agree that the number of violations in this case demonstrates a careless disregard for NRC requirements.

IV. THE LICENSEE HAS BEEN UNABLE TO COMPLY WITH CERTAIN NRC REQUIREMENTS

SECOM's fourth allegation is that the licensee has been unable to comply with NRC requirements, and asserts as its basis the potential violations

identified in Inspection Report 50-341/85040, the 80 LERs reported since March 1985, and the January 3, 1986 NRC memorandum from Mr. DuPont noted in Section III above.

The significance of the potential violations identified in Inspection Report 50-341/85040 and the numerous LERs has been discussed previously in my response to Petitioner's second allegation and need not be discussed further here.

The thrust of the DuPont memorandum is that improvements were needed by DECo in analyzing, reporting, and determining the root cause of LERs. This is similar to the concerns expressed in Inspection Report 50-341/85042 by other inspectors. The licensee agrees with these concerns and has instituted a system to trend and track LERs to identify specific problems and to correct them. The system not only identifies primary causes, but also identifies secondary or contributing causes. This represents a positive step on the part of the licensee.

The DuPont memorandum also mentions three additional concerns in the area of operations: licensee knowledge of status of equipment or systems, licensee control of operations and evolutions, and licensee failure to follow procedures. The licensee generally is in agreement with these concerns and has taken appropriate steps to resolve these concerns. As discussed in Section II of this decision, I have concluded that the licensee has appropriately improved its control of licensed activities.

Accordingly, I conclude that there is reasonable assurance that Fermi-2 management is able to comply with NRC requirements such that their activities will not present an undue risk to the public health and safety after the plant is restarted.

V. REACTOR OPERATIONS IMPROVEMENT PLAN

SECOM's fifth allegation is that the licensee's ROIP will not provide the substantive changes needed to correct the breakdown of operations at the plant. No particulars are provided however. The Petitioner further asserts that the breakdown has been an ongoing problem since the early 1970's, and cites several excerpts from a Michigan Public Service Commission Staff Report, 1984, (MPSC) as supporting this position.

I have previously discussed in this decision the licensee's response to the problems identified at Fermi-2 and the basis for my conclusion that the ROIP, as well as the broader based NOIP, in combination with other licensee actions, will provide the requisite reasonable assurance such that license revocation is unwarranted. With respect to the MPSC report, it is clear that its focus is on the management of the Fermi-2 project during the construction phase and from the perspective of whether costs were reasonably incurred. Accordingly, this report does not appear to be relevant to DECo's ability to safely operate the facility and, therefore, the specific points raised in the report will not be addressed here.

As I stated at the beginning of this decision, the NRC considered the licensee and its management team to be good performers in most areas of regulatory significance during the construction phase of the project and the Fermi-2 management team was thought to be ready to operate the facility adequately at the time of low power licensing. The findings identified by the NRC appear to be primarily related to licensee's management system and control of its operations activities in moving from the construction phase to the operation phase. The management and other changes discussed in this decision

provide a reasonable basis for concluding that the licensee is addressing the problems at Fermi-2, both NRC and self-identified, and that the licensee is able to safely operate Fermi-2 in compliance with the Commission's regulations.

CONCLUSION

Based upon the foregoing discussion and the information contained in the referenced documentation, I have concluded that there is reasonable assurance that operation of Fermi-2 will not present an undue risk to the public health and safety. Accordingly, the Petitioner's request is denied. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR §2.206(c) of the Commission's regulations.

James M. Taylor, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this 24th day of July, 1986