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GERALD CHARNOFF, P.C.

June 9, 1989

Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Dr. Thomas E. Murley  
Director of Reactor Regulation

Dear Dr. Murley:

On June 2, 1989 representatives of The Detroit Edison Company ("Detroit Edison") and I met with Lawrence Chandler, Esq. and Joseph Rutberg, Esq. of the General Counsel's staff to discuss the applicability of 10 CFR 50.81 to a planned summer 1989 Detroit Edison financing, as well as to similar financings expected to occur in the future. This letter is submitted in support of our belief that the transactions contemplated by Detroit Edison do not require prior NRC approval and do qualify for the automatic exemption extended by 10 CFR 50.81 (pursuant to the authority granted the Commission by 42 USC §2234).

Our analysis is as follows:

- Detroit Edison is a Michigan public utility. The Michigan Industrial Development Revenue Bond Act of 1963, 125 MCLA 1251, et seq., permits Michigan municipalities to assist Michigan public utilities in the financing of pollution control facilities qualified as such under section 103(c)(4) of the Federal Internal Revenue Code, 26 USCA §103(c)(4).
- To obtain the benefit of the Michigan statute the Detroit Edison financings are structured as follows:
  - . Detroit Edison conveys title to Fermi 2 pollution control equipment to the County of Monroe, Michigan ("County"), the political subdivision wherein the plant and the related pollution control equipment are located.

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- . The summer 1989 financing contemplates conveyance of title to the Two Minute Delay Off Gas System and the On-Site Facility. In 1973 and 1977 financings, the County took title to (1) the Radwaste Building and the two Water Cooling Towers and (2) the Waste Water Treatment and Gaseous Radwaste Systems, respectively.
- . The County issues its tax-exempt bonds in the amount of the purchase price (which is Detroit Edison's cost) and the proceeds are paid to Detroit Edison.
- . Detroit Edison agrees to buy back the equipment over the life of the County's bonds at a price matching the Principal and interest on the County bonds.
- . Detroit Edison retains full possession and control of the equipment.
- . The County may not sell its ownership interest.
- The County's interest in the overall transaction is that of a creditor holding a mortgage or lien within the scope of 10 CFR 50.81. Indicia of such an interest are:
  - . Tax benefits related to the equipment remain with Detroit Edison.
  - . Detroit Edison may, at its option, require a reconveyance of title to the equipment from the County during the life of the bonds. In this event, the County's interest is converted to a mortgage.
  - . The County will not undertake a financial risk of any sort in connection with the transaction. County approval is expressly conditioned upon the receipt of full indemnification from Detroit Edison for any and all liability associated with its bond issue.
  - . The Michigan Public Service Commission ("MPSC") treats transactions under the Michigan Industrial

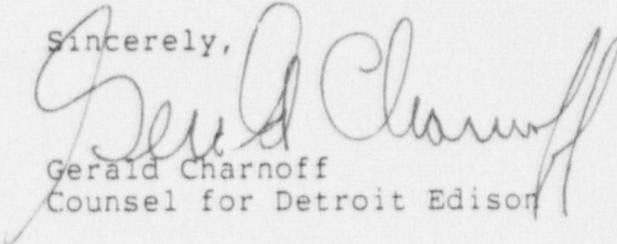
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Development Revenue Bond Act as financings requiring prior approval under a statute regulating utility securities issuances. Detroit Edison has secured such approval from the MPSC.

- . The County does not obtain a right to plant output.
- . The County's rights do not exceed the conditions set out in the two provisos to 10 CFR 50.81(a).

Detroit Edison believes that 10 CFR 50.81 is applicable and the Commission's confirmation of this interpretation is requested. Such a confirmation would recognize the transactions for what they are, financing vehicles enabling a public utility to enjoy the benefits of low-cost money. If you do not agree with our interpretation, an appropriate application for approval will be promptly filed.

Sincerely,



Gerald Charnoff  
Counsel for Detroit Edison

cc: Lawrence Chandler, Esq.