



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 17, 2021

Mr. Peter Dietrich
Senior Vice President
and Chief Nuclear Officer
DTE Electric Company
Fermi 2 – 260 TAC
6400 N. Dixie Highway
Newport, MI 48166

SUBJECT: FERMI UNIT 2 – TEMPORARY EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE FREQUENCY REQUIREMENTS OF 10 CFR PART 50, APPENDIX E, SECTIONS IV.F.2.B AND IV.F.2.C (EPID L-2021-LLE-0029 [COVID-19])

Dear Mr. Dietrich:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Sections IV.F.2.b and IV.F.2.c for Fermi Unit 2 (Fermi 2). This action is in response to your application dated May 17, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21137A234), which requested a one-time exemption from the requirements in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, to postpone the conduct of the Fermi 2 biennial emergency preparedness (EP) exercise until the end of calendar year (CY) 2021.

DTE Electric Company (DTE, the licensee) holds Renewed Facility Operating License No. NPF-43, which authorizes operation of Fermi 2. This license is subject to the rules, regulations, and orders of the Commission. The facility consists of a boiling-water reactor located in Monroe County, Michigan.

By letter dated November 12, 2020 (ADAMS Accession No. ML20317A203), DTE submitted a request for a one-time schedular exemption from Appendix E to 10 CFR Part 50, Sections IV.F.2.b and IV.F.2.c, to postpone the CY 2020 full-participation biennial EP exercise until CY 2021. DTE requested that the schedular exemption expire on July 27, 2021, or when the required exercise was completed in CY 2021, whichever occurred first. By letter dated December 8, 2020 (ADAMS Accession No. ML20332A179), the NRC approved this temporary exemption. By letter dated May 17, 2021, DTE submitted a second request for a schedular exemption to further postpone the CY 2020 full-participation biennial EP exercise until the end of CY 2021.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b state, in part:

Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. ... The exercise may be included in the full participation biennial exercise required by paragraph 2.c of this section.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

In Appendix E to 10 CFR Part 50, the NRC defines the term “full participation,” when used in conjunction with EP exercises for a particular site, to mean appropriate offsite State and local authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local, and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. While desirable, full participation exercises (i.e., exercises required by 10 CFR Part 50, Appendix E, Sections IV.F.2.b and 2.c) are not required to be performed simultaneously.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation’s healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing, limiting assemblies) in an attempt to limit the spread of COVID-19.¹ On March 10, 2020, Michigan Governor Gretchen Whitmer declared a state of emergency in Michigan to address the COVID-19 PHE.² Governor Whitmer expanded this declaration to also include a state of disaster on April 1, 2020.³ Subsequently, the Michigan Department of Health and Human Services issued an emergency order limiting indoor gathering sizes and requiring face covering on October 5, 2020.⁴ In response to these declarations and order and in accordance with the DTE corporate pandemic response plan, some site activities at Fermi 2 have been modified due to isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) and the licensee anticipates the possibility of isolation of required station personnel to maintain necessary staffing levels.

In your application, you provided the following information:

- The requested temporary exemption supports the continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required emergency response organization (ERO) personnel in response to the COVID-19 PHE. These activities are needed to ensure that DTE and supporting State and local government personnel are isolated from the COVID-19 virus and remain capable of executing the functions of the ERO, as described in the Fermi 2 Emergency Plan, as well as other non-nuclear health and safety functions for the benefit of the public.

¹ CDC, “How to Protect Yourself and Others,” April 18, 2020 (ADAMS Accession No. ML20125A069).

² https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521576--,00.html

³ https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-524025--,00.html

⁴ https://www.michigan.gov/documents/coronavirus/DRAFT_MDHHS_epidemic_order_-_Gatherings_masks_bars_sports_-_FINAL_704284_7.pdf

- The threat of COVID-19 spread has resulted in the inability to safely conduct the biennial EP exercise that was scheduled for December 15, 2020, due to implementation of isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.). On November 12, 2020, DTE requested the schedular exemption to postpone the Fermi 2 full-participation biennial EP exercise until July 27, 2021, at the latest, to meet the 35-month period guidance in the May 14, 2020, NRC letter, "U.S. Nuclear Regulatory Commission Planned Actions Related to Emergency Preparedness Biennial Exercise Requirements for all Licensees During the Coronavirus Disease 2019 Public Health Emergency" (ADAMS Accession No. ML20120A003). Subsequently, there has been a resurgence in COVID-19 in Michigan and the area surrounding Fermi 2.
- The State of Michigan, along with Monroe and Wayne Counties, have communicated to DTE that they have concerns with supporting the postponed CY 2020 Fermi 2 biennial EP exercise and maintaining protection of their staff during the current COVID-19 PHE response. Enclosures 2, 3, and 4 to the application provide copies of letters from the State of Michigan, Monroe County, and Wayne County, respectively, indicating that the offsite response organizations (OROs) are committed to maintaining their radiological emergency plans and are not impacted in any manner that would adversely affect their ability to maintain response capability to support emergency response activities in the event of an actual nuclear power plant emergency at Fermi 2.
- This requested temporary exemption, to allow for the conduct of the CY 2020 biennial EP exercise by the end of CY 2021, supports the continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required ERO and ORO personnel in response to the COVID-19 PHE.
- The most recent biennial EP exercise was conducted on August 28, 2018. Since that time, DTE has conducted drills, exercises, and other training activities that exercised the Fermi 2 emergency response strategies, in coordination with offsite authorities, including full-scale drills on May 21, 2019, and October 31, 2019. The drills were full onsite participation drills, which included activation of all Fermi 2 emergency response facilities and at least partial participation by the State of Michigan, along with Monroe and Wayne Counties. DTE has also conducted 24 limited participation drills distributed amongst four ERO teams since the last biennial EP exercise.
- DTE has conducted training drills at Fermi 2 with ORO participation since the last biennial EP exercise with no performance issues. Drills are also scheduled for CY 2021 to exercise the ORO to ensure continued familiarity with duties and ability to respond during an emergency at Fermi 2.
- DTE made a reasonable effort to hold the CY 2020 biennial EP exercise as originally planned or otherwise reschedule the exercise through the current exemption period but has been unsuccessful. DTE has been conducting weekly teleconference calls with the State of Michigan along with the Monroe and Wayne Counties Emergency Management to discuss exercise preparations and to evaluate the request for an exemption. During the weekly exercise coordination call conducted on April 7, 2021, it was agreed that the current rate of spread of COVID-19 in the area local to Fermi 2 made it unfeasible to safely conduct the exercise as scheduled in May 2021, and that an exemption request until the end of CY 2021 would be appropriate.

- The next biennial EP exercise is tentatively expected to occur in October 2021 and will be coordinated with the applicable OROs, the applicable NRC region, and the applicable Federal Emergency Management Agency region. To accommodate potential changes to this tentative schedule, DTE requests the schedular exemption expire on December 31, 2021, or when the required exercise is completed in CY 2021, whichever occurs first. While this date is outside the 35 months since the last Fermi 2 biennial EP exercise, DTE continues to coordinate with the NRC Region III to ensure the Fermi exercise is conducted by December 31, 2021. NRC Region III is currently scheduled to conduct an EP Baseline Program Inspection for July 12 through July 16, 2021. The inspection dates have been coordinated with the NRC Region III EP Inspectors. If this exemption request is granted to allow DTE to conduct the CY 2020 biennial EP exercise in CY 2021, then the subsequent biennial EP exercise will take place as previously scheduled in CY 2022, such that future biennial EP exercises will continue to be held as planned in even-numbered years.

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances are present.

The NRC staff determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The regulations in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c concern requirements for licensees to conduct biennial EP exercises at their facilities. No new accident precursors are created by allowing the licensee to extend the deadline for conducting the postponed CY 2020 biennial EP exercise until the end of CY 2021. Thus, the probability and consequences of postulated accidents are not increased. In addition, the requested exemption for a change to the biennial EP exercise schedule has no relation to security issues. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Special circumstances, per 10 CFR 50.12, that apply to the requested exemption include:

- a. 10 CFR 50.12(a)(2)(ii): "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

The regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.b requires licensees to conduct an exercise of their site emergency plan biennially. Further, the regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. The underlying purpose of these requirements is to ensure that the emergency organization personnel are familiar with their duties and to identify and correct any weaknesses that may exist in the licensee's EP Program. The underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities and the licensee.

The licensee stated that it has conducted drills, exercises, and other training activities since the last evaluated EP exercise that exercised the Fermi 2 emergency response strategies, in coordination with offsite authorities, including full-scale drills on May 21, 2019, and October 31, 2019, which included activation of all Fermi 2 emergency response facilities and at least partial participation by the State of Michigan along with Monroe and Wayne Counties.

Based on the above, the NRC staff finds that the underlying purposes of these regulations are met by the licensee having conducted these preparedness activities and establishing an acceptable tentative date for the rescheduled CY 2020 biennial EP exercise of October 2021.

- b. 10 CFR 50.12(a)(2)(v): “The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.”

DTE has determined that the originally scheduled exercise date does not support continued implementation of the isolation activities (e.g., social distancing, group size limitations, self-quarantining, etc.) to protect required ERO personnel in response to the ongoing COVID-19 PHE. These activities are needed to ensure that ERO personnel are isolated from COVID-19 and remain capable of executing the functions of the ERO, as described in the Fermi 2 Emergency Plan. A tentative date of October 2021 has been proposed.

The State of Michigan, Monroe County, and Wayne County informed the licensee that due to the risks involved with COVID-19, it is not safe at this time to assemble the required personnel for an exercise, as has been done in the past and was planned for at the time that the CY 2020 biennial EP exercise was scheduled. DTE stated that during the April 7, 2021, weekly exercise coordination call, it was agreed upon by the State of Michigan and Monroe and Wayne Counties that the current rate of spread of COVID-19 in the area local to Fermi 2 made it unfeasible to safely conduct the exercise as scheduled in May 2021, and that an exemption request until the end of CY 2021 would be appropriate.

Therefore, the NRC staff finds that extending the deadline for conducting the postponed CY 2020 biennial EP exercise in CY 2021 would provide only temporary relief from the applicable regulation and that the licensee has made good faith efforts to comply with the regulation.

Based on the above, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements.

The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its

safety systems, change any of the assumptions or limits used in the licensee's safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the licensee's technical specifications or by the regulations in 10 CFR Part 20, "Standards for Protection Against Radiation." There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Granting the requested exemption does not impact NRC findings of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Fermi 2. In the statement of considerations for the standards to be applied when considering whether to grant exemptions ("Specific Exemptions; Clarification of Standards, Final Rule," 50 FR 50764, dated December 12, 1985), the Commission stated:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

The NRC staff has determined that in accordance with 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and that special circumstances are present. Therefore, the NRC hereby grants the licensee's request for a schedular exemption from the requirements for the biennial EP exercise in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c.

This exemption expires on December 31, 2021, or when the required exercise is completed in CY 2021, whichever occurs first.

P. Dietrich

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If you have any questions, please contact the Fermi 2 project manager, Surinder Arora, at (301) 415-1421, or by e-mail to Surinder.Arora@nrc.gov.

Sincerely,

Caroline L. Carusone, Acting Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-341

cc: Listserv

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