

November 6, 2009

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the Atomic Safety and Licensing Board**

In the Matter of: ) Docket No. 52-033  
The Detroit Edison Company )  
(Fermi Nuclear Power Plant, )  
Unit 3) )

\* \* \* \* \*

**Supplemental Petition of Beyond Nuclear, Citizens for Alternatives to  
Chemical Contamination, Citizens Environmental Alliance of  
Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter,  
Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L.  
Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn  
R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and  
Shirley Steinman for Admission of a Newly-Discovered Contention, and  
for Partial Suspension of COLA Adjudication**

**1. Introduction**

Pursuant to 10 C.F.R. § 2.309(c)(1), Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club (Michigan Chapter), Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman hereby petition and move the Atomic Safety and Licensing Board (ASLB) to admit a newly-discovered contention in the combined operating license proceeding for Fermi, Unit No. 3.

Petitioners state that DTE, the Applicant, appears to be serially

in violation of NRC regulations requiring the implementation of a Quality Assurance program during the planning and development stages of the Economic Simplified Boiling Water Reactor design which it proposes for the proposed Fermi 3 nuclear reactor. Accordingly, Petitioners further move the ASLB to suspend part of the adjudication of the Fermi 3 COLA, except for their proffered Contention 15, indefinitely until there is satisfactory proof positive of a fully-implemented quality assurance program for Fermi 3 which integrates all previous and contemplated QA revisions.

## **2. Description of the Proceeding**

This proceeding concerns the application for a combined license ("COL") filed pursuant to 10 CFR Part 52 Subpart C by Detroit Edison Company ("DTE") on September 18, 2008 and supplemented thereafter. The application was accepted for docketing by the NRC on November 24, 2008. All of the present Petitioners - Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman have been accorded either representational standing, through their members, or individual standing. *Detroit Edison Company* (COLA for Fermi Unit 3), LBP-09-16, \_\_\_NRC \_\_\_, slip op. at 7-9 (July 31, 2009).

## **3. Proposed Contention No. 15**

Detroit Edison has failed to comply with Appendix B to 10 CFR Part 50 to establish and maintain a quality assurance (QA) program

since March 2007 when it entered into a contract with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) application activities and to retain overall control of safety-related activities performed by B&V. DTE further has failed to complete any internal audits of QA programmatic areas implemented for Fermi 3 COLA activities performed to date. And DTE also has failed to document trending of corrective actions to identify recurring conditions adverse to quality since the beginning of the Fermi 3 project in March 2007.

Besides violating General Design Criteria #1, this failing suggests that DTE's corporate management has little concern for nuclear quality assurance, as they allowed the situation to become serious for more than two (2) years, without intervening.

On October 6, 2009, Richard Rasmussen, Chief of Quality and Vendor Branch B, Division of Construction Inspection & Operational Programs of the NRC's Office of New Reactors, sent a letter to Jack Davis, Chief Nuclear Officer for the Detroit Edison Company ("DTE"), notifying the Applicant as follows of three (3) putative violations of Nuclear Regulatory Commission regulations:

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted at the Detroit Edison Company (DECo) in Detroit, MI on August 18 - 21, 2009, three violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are described below.

A. Criterion II, "Quality Assurance Program," of Appendix B to 10 CFR Part 50 states, in part, that "The applicant shall establish at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the requirements of this appendix. This program shall be documented by written policies, procedures, or instructions and shall be carried out throughout plant life in accordance with those policies, procedures, or instructions."

Criterion IV, "Procurement Document Control," of Appendix B to 10 CFR Part 50 states, in part, that "Measures shall be established to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are suitably included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the applicant or by its contractors or subcontractors. To the extent necessary, procurement documents

shall require contractors or subcontractors to provide a quality assurance program consistent with the pertinent provisions of this appendix."

Criterion VII, "Control of Purchased Material, Equipment, and Services," of Appendix B to 10 CFR Part 50 states, in part, that "Measures shall be established to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures shall include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products upon delivery. The effectiveness of the control of quality by contractors and subcontractors shall be assessed by the applicant or designee at intervals consistent with the importance, complexity, and quantity of the product or services."

Contrary to the above, DECo failed to establish and implement a Fermi Unit 3 quality assurance (QA) program between March 2007, when the initial contract was placed with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) activities, until February 2008, and retain overall control of safety-related activities performed by B&V.

DECo's failure to establish and implement a Fermi 3 QA program resulted in:

1. Failure to classify safety-related B&V COL application and OE contracts as safety-related.
2. Failure to impose adequate QA requirements and a sufficient statement of work in the OE Contract for QA oversight activities performed by B&V.
3. Failure to adequately document the qualification of B&V to perform safety-related COL application activities.
4. Failure to adequately document an annual supplier evaluation of B&V.

These issues have been identified as Violation 05200033/2009-201-01.

This is a Severity Level IV violation (Supplement II of the Enforcement Manual).

B. Criterion XVIII, "Audits," of Appendix B to 10 CFR Part 50 states, in part, that "A comprehensive system of planned and periodic audits shall be carried out to verify compliance with all aspects of the quality assurance program and to determine the effectiveness of the program." Fermi 3 Policy: COL Quality Assurance Program Description (QAPD) During Construction and Operation, Section 18, "Audits," Revision 1, states that "Internal audits of organization and facility activities, conducted prior to placing the facility in operation, should be performed in such a manner as to assure that an audit of all applicable QA program elements is completed at least once each year or at least once during the life of the activity, whichever is shorter." This requirement is restated in Detroit Edison Company (DECo) Procedure Number NP 18.1, "Audits (Internal)," Revision 1, dated

August 7, 2009.

Contrary to these requirements, as of August 21, 2009, DECo QA personnel had not completed any internal audits of QA programmatic areas implemented for Fermi 3 COL application activities performed to date.

This issue has been identified as Violation 05200033/2009-201-02.

This is a Severity Level IV violation (Supplement II of the Enforcement Manual).

C. Criterion XVI, "Corrective Action," of Appendix B to 10 CFR Part 50 states, in part, that "Measures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected."

Fermi 3 Policy: COL Quality Assurance Program Description (QAPD) During Construction and Operation, Section 16, "Corrective Action," Revision 1, sets forth the requirement that "Reports of conditions adverse to quality are analyzed to identify trends." DECo Procedure Number NP 16.1, "Corrective Action Program," Revision 1, dated August 4, 2009, stated that the Director of Quality Management "is responsible for trending corrective actions to determine if there are adverse trends that require management attention."

Contrary to these requirements, as of August 21, 2009, DECo had not documented trending of corrective actions to identify recurring conditions adverse to quality since the beginning of Fermi 3 project in March 2007.

This issue has been identified as Violation 05200033/2009-201-03.

This is a Severity Level IV violation (Supplement II of the Enforcement Manual).

The issues raised by the Notice of Violation remain pending and unresolved as of the date of this submission.

A Final Safety Analysis Report (FSAR) must be compiled for a proposed commercial nuclear power plant such as Fermi 3. 10 C.F.R. § 52.79 requires as follows by way of inclusion of a quality assurance program within the Fermi FSAR:

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components of the facility as a whole. The final safety analysis report shall include the following information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety

matters that must be resolved by the Commission before issuance of a combined license:

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(25) A description of the quality assurance program, applied to the design, and to be applied to the fabrication, construction, and testing, of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 have been and will be satisfied, including a discussion of how the quality assurance program will be implemented. . . .

Petitioners state that DTE has significantly failed to comply with the aforementioned regulation and with the requirements of Appendix B to 10 CFR part 50.

The hallmark of any nuclear power plant construction process is its Nuclear Quality Assurance. Nuclear Quality Assurance is codified in numerous places within 10 CFR part 50. The single most important reference to Nuclear Quality Assurance is within the General Design Criteria (GDC) in 10 CFR part 50, Appendix A. Criterion 1 of the GDC demands Quality Assurance. Significantly, of the 64 General Design Criteria, regulators deliberately chose Nuclear Quality Assurance to be the first Criterion. Without Criterion 1 - without nuclear grade quality, in other words - there can be no nuclear construction. Moreover, Criterion 1 demands that "Appropriate records. . . shall be maintained by or under the control of the nuclear power unit licensee throughout the life of the unit."

Nor is Criterion 1 of the GDC the only quality-related federal regulation. 10 CFR part 50, Appendix B also applies in its entirety to Quality Assurance for Fermi 3. According to 10 CFR part 50,

Appendix B, Criterion 1, "The applicant shall be responsible for the establishment and execution of the quality assurance program." But without ongoing audits and inspections, neither the NRC nor DTE as licensee can confirm compliance with strict requirements of the anticipated Combined Operating License for Fermi 3.

For example, at a nuclear power plant with the requisite QA program in place, there are strict controls on the type of light bulbs allowed inside the containment. Such controls are required in order to prevent halogen contamination of the reactor vessel that may cause the vessel to fail when it is pressurized. This is just one of thousands of critical regulations which must be enforced in order to assure nuclear safety and reliability. At present, DTE cannot assure regulators or the public that it acknowledges the existence of the regulation imposing halogen restrictions. Likewise, DTE cannot provide assurance that thousands of other critical maintenance requirements will be performed in the course of building and operating Fermi 3.

By willingly and deliberately choosing not to comply with 10 CFR part 50 since the inception of the COLA proceeding, DTE cannot provide adequate assurance that Fermi 3 can ever comply. A continuity of records is required by 10 CFR part 50, Appendix A, Criterion 1. When the continuity of records is lost, it becomes nearly impossible to recreate the voluminous archives necessitated by Quality Assurance obligations.

Fermi 3, proposed to be an ESBWR design, would rely primarily on natural forces such as gravity to provide emergency water in the event

of a loss of coolant instead of "active" equipment such as motor-driven pumps. This GE design ostensibly has fewer systems than previous reactor designs by this contractor, with presumably fewer pumps, valves and motors. There are uncertainties associated with these novel and largely untested safety features, and so many questions remain concerning the safety of the ESBWR design.

There are literally hundreds of open items which are currently the subject of NRC staff requests for additional information (RAIs). The Design Control Document (DCD) and the FSAR for Fermi have already seen one set of revisions. Given the extensive list of staff open items on the ESBWR design certification application, it is likely that the ESBWR design will undergo several further iterations before the design certification rulemaking is finalized. If the norm is that many reactor and component design decisions are preliminary until financing is assured, that constitutes an even more compelling reason to have a functioning QA program at the earliest stages. A Finnish nuclear regulator recently noted that "a complete design would be the ideal. But I don't think there's a vendor in the world who would do that before knowing they would get a contract. That's real life." Nucleonics Week, "Lack of complete design blamed for problems with Olkiluoto-3", 17 May 2007, p. 4.<sup>1</sup> Yet to date, DTE can show zero QA

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<sup>1</sup>Quoted at p. 118 of "The World Nuclear Industry Status Report 2009: With Particular Emphasis on Economic Issues," by Mycle Schneider, Independent Consultant, Mycle Schneider Consulting, Paris (France), Project Coordinator; Steve Thomas, Professor of Energy Policy, Greenwich University (UK); Antony Froggatt, Independent Consultant, London (UK); Doug Koplou, Director of Earth Track, Cambridge (USA); Paris, August 2009, Commissioned by German Federal Ministry of Environment, Nature Conservation and Reactor Safety (Contract number UM0901290), viewable at: [http://www.bmu.de/files/english/pdf/application/pdf/welt\\_statusbericht\\_atomindustrie\\_0908\\_en\\_bf.pdf](http://www.bmu.de/files/english/pdf/application/pdf/welt_statusbericht_atomindustrie_0908_en_bf.pdf)



compliance, and so public safety and prudent cost management are not at all guaranteed at Fermi 3. The ESBWR rulemaking will certainly result in further plant design changes which will themselves bear serious Quality Assurance implications. Absent the problem-solving orientation of a QA program which is amenable to NRC oversight and public scrutiny, DTE cannot assure the safety, much less the operability, of Fermi 3.

**4. This Contention Meets the Standards for Admission**

The basis for this contention was discovered only on October 8, 2009 by Petitioners in a routine review of the NRC's ADAMS online document archive. The NRC Notice of Violation dated October 5, 2009 was deposited into ADAMS on October 7, 2009. This petition filing is made within thirty (30) days of discovery of the underlying events, and further comports with the requirements of 10 C.F.R.

§2.309(c)(1)(i-viii) as follows:

(i) Good cause, if any, for the failure to file on time

Petitioners have timely brought their Motion within thirty (30) days of discovery of the basis for the contention. It deals with a topic that considerably differs from the representations submitted in the COLA, in that the docket is void of any actual quality assurance activities in fulfillment of the representations made to this point by DTE. This contention meets the criterion that a late contention must be based on data or conclusions that differ significantly from what was submitted in the license application and cannot raise arguments that could have been raised previously if publicly-available information about the facility had been examined. *Cf. Duke Power Co.*

(McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1& 2), CLI-02-28, 56 NRC 373, 385-386 (2002).

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding

Petitioners have previously been accorded standing in this COLA proceeding by the assigned Atomic Safety and Licensing Board. Once their standing to proceed as parties has been recognized, the legal barriers to the types of contentions which might be raised by Petitioners are reduced. Environmental plaintiffs may be accorded standing to pursue multiple inadequacies under environmental laws in order to exact the maximum degree of compliance. *Sierra Club v. Adams, supra*, 578 F.2d at 391-93; see also *Iowa Indep. Bankers v. Bd. of Governors*, 511 F.2d 1288, 1293-94 (D.C. Cir. 1975). "Once a genuine case or controversy has been established for standing purposes, nothing in Article III should limit the theories that can be spun out of the 'common nucleus of operative fact.'" 13A Wright & Miller, Federal Practice and Procedure § 3531.16 at 109 (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d. 218 (1966)).

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding

The Petitioners' interest in the proceeding derives from their claim of standing under the NRC's "proximity presumption", because Petitioners or their members reside, work or pursue recreation within 50 miles of the site of the proposed Fermi 3. *Calvert Cliffs 3 Nuclear Project* (COLA for Calvert Cliffs Unit 3), LBP-09-04, \_\_\_NRC \_\_\_, slip op. at 12-17 (March 24, 2009) ("The Commission . . . has applied its

expertise and concluded that persons living within a 50-mile radius of a proposed new reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility").

Petitioners also claim procedural harms from the manner by which DTE has invoked the COLA process. "Reliance on procedural harms alters a plaintiff's burden on the last two prongs of the Article III standing test. To establish standing by alleging procedural harm, the [plaintiffs] must show only that they have a procedural right that, if exercised, could protect their concrete interests and that those interests fall within the zone of interests protected by the statute at issue." *Defenders of Wildlife v. EPA*, 420 F.3d 946, 957 (9th Cir. 2005). If the causation of harm "is dependent upon the agency's policy," then there is procedural injury and Article III standing. *Id.* See *West v. Sec'y of Dep't of Transp.*, 206 F.3d 920, 930 n. 14 (9th Cir. 2000) (environmental plaintiff was "surely . . . harmed [when agency action] precluded the kind of public comment and participation NEPA requires in the EIS process").

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest

This contention addresses quality assurance concerns which fall under the NRC's responsibility for the public health and safety under the Atomic Energy Act. It is obviously in the public interest that Fermi 3 not be constructed of shoddy parts and materials, not be designed with serious safety flaws, not be brought online after an excessively-expensive and poorly-managed construction phase, not have recurring maintenance difficulties throughout the plant's useful life, and not have concomitant portents for accidents.

If the NRC de-emphasizes quality concerns in plant design and construction, the margin of public safety, including the safety of Petitioners or their members, will be directly affected.

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected

While there is a pending NRC Notice of Violation on the subject of quality assurance, there might be a difference between the NRC's enforcement approach and the adjudication of Petitioners' contention. The NRC enforcers might allow DTE to atone for its noncompliance by providing proofs of having sampled the quality of already-completed design or management activity. But Petitioners have articulated a "contention of omission",<sup>2</sup> and the extent of quality assurance activity which must be proven for issuance of a Combined Operating License is potentially larger, since the FSAR's accuracy in explicating accident scenarios and probabilities is brought into question by the claimed utter lack of ongoing quality assurance activity. The discretion which may be exercised at the NRC director-level is considerable, and the actual questions to be considered in an enforcement proceeding may be limited in ways that a licensing proceeding may not. *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 & 2), CLI-80-10, 11 NRC 438, 441 (1980).

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties

Given the scope of the possible regulatory and managerial

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<sup>2</sup>"Where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . , the contention is moot". *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002).

failings of DTE here, the Petitioners' interests cannot alternatively be deemed represented by the NRC Staff in the Notice of Violation action. There is a genuine controversy raised by Petitioners here, and a licensing board may not delegate its obligation to decide issues in controversy to the Staff. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), ALAB-298, 2 NRC 730, 737 (1975); *Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 210 (1984), (rev'd on other grounds, ALAB-793, 20 NRC 1591, 1627 [1984]), citing, Perry, *supra*, 2 NRC at 737.

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding

The COLA issues would be broadened were this contention to be allowed by the ASLB. Petitioners specifically seek a delay in these proceedings owing to the very serious nature of managerial failing depicted by DTE's lack of a meaningful QA program. Petitioners request that their proffered Contention 15 be accepted for adjudication and accompanied by the immediate suspension of Fermi 3 COLA processing, pending a thorough reworking and proven implementation of quality assurance management by DTE over its contractor, B&V which integrates all previous and contemplated QA revisions.

DTE's serious managerial failing is likely to be compounded by the perennial weakness of NRC enforcement in the form of poor oversight of quality assurance requirements. While the NRC staff inspectors' identification and prosecution of the Notice of Violation is highly laudable, it is atypical, when measured against the NRC's history of regulating quality assurance problems.

According to David Lochbaum, formerly the Director of the Reactor Safety Project at Union of Concerned Scientists and currently a reactor operator trainer for the NRC, more than 70 percent of the year-plus outages at U.S. nuclear power reactors over the past four decades have been caused by quality assurance program breakdowns.<sup>3</sup> The NRC's regulations require plant owners to have effective quality assurance programs that find and fix problems in a timely and effective manner. But again and again, those quality assurance programs have failed and the NRC has not detected the breakdowns until the sheer volume of problems missed or inadequately repaired has eroded safety levels to the point that reactors remained shut down for longer than a year while overdue corrective actions were finally taken. *Id.*

For example, in March 2001, the NRC informed Davis-Besse's owner that its inspection team "concluded that problems were properly identified, evaluated, and resolved within the problem identification and resolution programs," using the current nuclear industry terminology for quality assurance programs. *Id.* Less than a year later, in 2002, extensive degradation to the reactor vessel head was identified at Davis-Besse. In August 2002, the NRC identified a long list of tasks to be completed before it would permit Davis-Besse to restart. The first item listed by the NRC in a section titled "Adequacy of Safety Significant Programs" was "Corrective Action Program" - the identical program determined by the NRC to be fully adequate in March 2001. The NRC's 2001 determination was completely erroneous; it was

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<sup>3</sup>[http://www.ucsusa.org/nuclear\\_power/nuclear\\_power\\_risk/safety/ucs-testimony-at-nuclear.html](http://www.ucsusa.org/nuclear_power/nuclear_power_risk/safety/ucs-testimony-at-nuclear.html)

revealed that the quality assurance program did not conform to federal regulations in March 2001 or for several years prior to that date. The NRC failure to enforce its quality assurance regulations contributed to the depth and breadth of the corrosion hole and related problems plaguing Davis-Besse. *Id.*

There was a memorable 1+ year outage caused by poor QA tracking at Fermi 2, DTE's only operating nuclear reactor, in 1993.<sup>4</sup>

The recurring tritium spills at the Braidwood nuclear plant in Illinois,<sup>5</sup> and the recurring steam dryer damage at the Quad Cities nuclear plant<sup>6</sup> in Illinois share a common cause: defective, pitiful quality assurance oversight by the NRC. *Id.*

The history of the NRC's poor supervision of nuclear utilities' QA programs played a part in the cancellation of the Zimmer plant in Ohio in the 1970's even though it was 97% complete, costing shareholders and ratepayers hundreds of millions of dollars.<sup>7</sup> QA was a factor in the Midland debacle<sup>8</sup> and cancellation in Michigan in that era. Ineffectual QA oversight by the NRC over the decades has allowed expensive problems at Sequoyah<sup>9</sup> and Watts Bar<sup>10</sup> in Tennessee; Browns

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<sup>4</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/fermi-2.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/fermi-2.pdf)

<sup>5</sup><http://nucnews.net/nucnews/2006nn/0605nn/060509nn.txt>

<sup>6</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/20080312-ucs-house-nuclear-climate-testimony.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/20080312-ucs-house-nuclear-climate-testimony.pdf)

<sup>7</sup>[http://en.wikipedia.org/wiki/Zimmer\\_Nuclear\\_Power\\_Plant](http://en.wikipedia.org/wiki/Zimmer_Nuclear_Power_Plant)

<sup>8</sup>[www.hss.energy.gov/CSA/CSP/qa/NQAStandardsEvolution1.doc](http://www.hss.energy.gov/CSA/CSP/qa/NQAStandardsEvolution1.doc)

<sup>9</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/sequoyah-1-i.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/sequoyah-1-i.pdf)

<sup>10</sup><http://www.nytimes.com/1987/01/27/us/nuclear-manager-subject-of-inquiry.html>

Ferry in Alabama;<sup>11</sup> Indian Point in New York;<sup>12</sup> Millstone in Connecticut;<sup>13</sup> Salem<sup>14</sup> and Hope Creek<sup>15</sup> in New Jersey; and Palo Verde in Arizona.<sup>16</sup> In these cases, the NRC's inconsistent enforcement of QA regulations led to chronic erosion of safety levels and, in turn, dozens of year-plus reactor outages as well as increased chances of a tragic nuclear plant accident. *Id.* While it is indeed positive that the Staff identified and formalized the pending charges against DTE over quality assurance failings, this significant intervention requires correspondingly tough ongoing regulation and a major showing by DTE of commitment to QA to regain credibility. Since there has apparently not been a genuine QA program administered by DTE in the Fermi 3 preconstruction phase, the lack of QA infects all of the steps taken to date, and a halt to COLA processing is needed because of the potentially large revisions which might become necessary to it.

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record

Since Petitioners are presently parties to this COLA proceeding, there is a certain recognition by the ASLB that their participation will assist in developing a sound record. In light of the circum-

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<sup>11</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/browns-ferry-2-ii.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/browns-ferry-2-ii.pdf)

<sup>12</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/indian-point-3-ii.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/indian-point-3-ii.pdf)

<sup>13</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/millstone-2.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/millstone-2.pdf)

<sup>14</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/salem-1.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/salem-1.pdf)

<sup>15</sup><http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/reactors/ea96014.html>

<sup>16</sup>[http://www.ucsusa.org/assets/documents/nuclear\\_power/palo-verde-1.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/palo-verde-1.pdf)



stances under which this new contention is raised - viz., serious quality assurance questions having been alleged - Petitioners will prompt a sound record on an additional critical issue.

## 5. Conclusion

Before issuing a COL, the NRC staff must complete safety and environmental reviews of the application. The COLA must comply with provisions of the Atomic Energy Act, the National Environmental Policy Act, NRC regulations and all applicable laws.

Petitioners present their newly-discovered contention in timely fashion. They have addressed the criteria of 10 C.F.R. §2.309(c)(1) (i-viii) and have given the ASLB ample justification for admission of their proffered contention for hearing.

On November 5, 2009, NRC Commissioner Jaczko, referring to the Combined Operating License Application process, noted that "there is somewhat less predictability in the review process because we are doing the environmental reviews, the design reviews and the COL reviews simultaneously rather than in sequence." <http://www.nrc.gov/reading-rm/doc-collections/commission/speeches/2009/s-09-031.html>. Commissioner Jaczko suggested that the most efficient response to keep licensing events moving positively is for:

. . .[t]he utilities and vendors themselves . . . to get their work done. That means getting the designs completed, using proven codes and standards, and providing a sufficient level of detail in submittals, testing and analyses. If and when we get to the construction phase, that means not only quality craftsmanship and components, but a rigorous inspection and testing program.

. . . So if there are two things I ask of you on the topic of new reactors, it is to give us high quality and complete applications, and have faith in the process we have established to review them. . . .

*Id.*

DTE's management of the Fermi 3 COLA currently falls well short of the Commissioner's very legitimate expectations.

**WHEREFORE**, Petitioners pray the Atomic Safety and Licensing Board admit the proffered quality assurance contention into these proceedings. Further, Petitioners pray the ASLB partially suspend adjudication of the Fermi 3 COLA until the applicant, DTE, provides satisfactory proof positive of a fully-implemented quality assurance program which integrates all previous and contemplated QA revisions.

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