

8 December 2016

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**  
**BEFORE THE COMMISSION**

In the Matter of	)	Docket No. 50-341-LR
	)	
DTE ELECTRIC COMPANY	)	NRC-2014-0109
	)	
(Fermi Nuclear Power Plant, Unit 2)	)	NPF-43
	)	
License Renewal Application (LRA)	)	

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CITIZENS' RESISTANCE AT FERMI 2 (CRAFT) COMBINED REPLY TO DTE AND NRC  
STAFF ANSWERS TO CRAFT CONSOLIDATED MOTIONS AND PROPOSED NEW  
CONTENTION

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY OF THE COMMISSION**

In the Matter of	)	
	)	
DTE ELECTRIC CO.	)	Docket No. 50-341-LR
(Fermi Nuclear Reactor, Unit 2)	)	
	)	

**CITIZENS’ RESISTANCE AT FERMI 2 (CRAFT) REPLY TO NRC STAFF AND DTE  
LAWYERS OPPOSITION TO THE CRAFT MOTION TO REOPEN THE HEARING  
AND SUBMIT A NEW CONTENTION**

Now comes Citizens’ Resistance at Fermi 2 (CRAFT) to reply to both NRC Staff and DTE filings against reopening the hearing and submitting a new contention regarding the proposed 20-year license extension for the aged Fermi 2 nuclear reactor. For the reasons set forth below, the Secretary of the Commission acted within its sound discretion when it halted the issuance of the 20-year license extension to DTE Electric Company, a subsidiary of DTE Energy, and should therefore allow the ALSB Hearing to be reopened and admit our new contention. CRAFT concurs with appreciation the Acting Secretary of the Commission for recognizing the legality of our Motion to Reopen the Hearing and present a new contention.

NRC Staff filing continues to focus on the shortcoming of filing done by average citizens instead of a lawyer, and yet they fail to read the content while they focus on form. “CRAFT’s Motion to Reopen should also be denied because it is untimely and does not raise an exceptionally grave environmental issue.” (page 10, 1<sup>st</sup> paragraph) We believe that not protecting citizens to the fullest extend is a grave environmental issue.

NRC Staff admits DTE's failure to fully protect the people, "In other words, DTE's SAMA Analysis assumes all persons within the modeled zones receive no protection from KI." (page 11, footnote 48) CRAFT holds that the lack of providing KI to the public is a grave environmental issue, and Staff admitted, "The Commission does provide for untimely motions to reopen the record when an exceptionally grave issue has been identified." (10 C.F.R, § 2.326(a)(1)).

However, instead of recognizing the seriousness of potassium iodide (KI) distribution, NRC Staff dismisses by stating, "Therefore, CRAFT's Motion to Reopen is untimely and this untimeliness cannot be excused."

CRAFT notes that NRC Staff had already recommended issuing Fermi 2's license extension on November 9, 2016, and demonstrates bias again by recommending license extension two days ago, December 6, 2016, all this before the ASLB has had the opportunity to hear the merit of the argument.

CRAFT takes issue with DTE characterization in stating "There is no excuse for CRAFT's failure to raise this issue until the eleventh hour." (Ibid) CRAFT filed within the deadline to file, but they remind the Commission that they don't like late filings (even if they meet legal criterion) We charge that DTE has no excuse for their failure to ensure the safety of the region by providing residents with potassium iodide since in their own words, "Nor did DTE give any credit for KI in calculating the consequences of a severe accident. Because incorporating KI into the model would have reduced dose consequences..." (bottom of page 3/top of 4).

**WHEREFORE**, CRAFT respectfully urges the Nuclear Regulatory Commissioners to find NRC Staff and DTE Electric Company's opposition to be without merit and to dismiss the same.

## **INTRODUCTION**

Pursuant to 10 CFR Part 2.309(i) (NRC Staff Answer at 1), *pro se* Intervenor Citizens' Resistance at Fermi 2 (CRAFT) respectfully submits this Combined Reply to portions of DTE and NRC Staff Answers to CRAFT Consolidated Motions and Proposed New Contention (Petition) in accordance with 10 CFR Parts 2.309, 2.326, and 2.323. Chronicled and docketed, the NRC Staff (Office of NRR Director) retreated from an unwelcome November 2016 announcement and indefinitely put on hold the planned issuance of a license renewal in this matter due to the timely filing of CRAFT's good faith proposed new contention and motion to reopen this prematurely closed record. DTE Electric Company seeks a Fermi 2 Nuclear Power Plant operating license extension to allow continued operations until 2045. CRAFT continues to oppose DTE's license renewal application. DTE opposes CRAFT's proposed new contention and related motions. In due course, this new pleading appears before the Commission.

## **RESPONSE TO DTE and STAFF OBJECTIONS**

DTE argues that CRAFT's real issue of concern is outside the scope of a license renewal review and that CRAFT fails to raise a genuine dispute in large part because the Fermi 2 SAMA analysis "does not take credit for the KI program in the calculation of accident consequences, and therefore the implementation of the program does not impact the SAMA results." (DTE Answer at 2). DTE argues that CRAFT's proposed new contention is actually a challenge to the adequacy of the Fermi 2 Emergency Plan and implementation, and therefore involves a matter that need not be examined as part of license renewal.

CRAFT disputes DTE's argument and characterizations of CRAFT's contention. Regarding characterizations, CRAFT contends that, in reality, DTE seeks to hide behind friendly regulatory processes and rules of procedure in order to earn an operating license renewal for a

plant which CRAFT's contention shows has serious deficiencies related to emergency preparedness planning for a reasonably foreseeable severe accident. DTE's boilerplate incantations to the contrary should be resoundingly rejected. Furthermore, regarding characterizations, one striking theme revealed in this Reply Brief and throughout this license renewal proceeding in contention after contention is DTE's disregard for inhabitants of cross-border communities within the 50-mile radius of Fermi 2. As CRAFT has shown, DTE and the NRC Staff have not reasonably and fairly evaluated the environmental consequences of continued operations; as well, CRAFT has shown that relicensing would be inimical to public health and safety. Therefore, CRAFT contends that a fair reading of NEPA and AEA would settle this matter expeditiously in favor of CRAFT.

Regarding DTE's argument that CRAFT's proposed contention is frivolous and fails to raise a genuine dispute with the Fermi 2 SAMA analysis, CRAFT rejects DTE's broad dismissal and maintains that a core argument and component of CRAFT's SAMA contention is unaffected by DTE's conservative KI modeling. Moreover, DTE's incomplete Answer raises additional questions warranting further review. From the Petition, "CRAFT's new and material dispute with the Applicant extends to the environmental justice implications that a proper ER SAMA analysis would surely expose in a dramatic and undeniable fashion; a 'good cause' for further review, indeed." DTE's Answer to the Petition conspicuously omits and fails to discuss this environmental justice (EJ) contention which falls squarely within the scope of license renewal. In lieu of filing a complete Answer, DTE incorrectly categorizes all new contentions that allege an ER SAMA deficiency as inherently stale and void because such challenges supposedly could have been raised at the outset of the proceeding. (DTE Answer at 5). Yet, paradoxically, DTE

admits that KI input considerations in the Fermi 2 SAMA analysis were not disclosed to CRAFT until May 2015, long after the filing of CRAFT's original Petition. (DTE Answer at 5).

In any event, CRAFT explicitly pleaded that this new SAMA dispute is based on materially different and newly commencing regulations being implemented in Canada by the Canadian Nuclear Safety Commission (CNSC) pertaining to augmented KI distribution for EPZ communities as a Fukushima Lessons Learned mitigation program. The NRC Staff Answer (at 14) fails to even attempt to rebut CRAFT's contention that such existing Canadian regulations are new, but, unlike DTE's Answer, at least the NRC Staff Answer acknowledges the pleading. In the Petition discussion on SAMA KI calculations, CRAFT shows that the SAMA analysis would surely be affected by considering KI coverage, and therefore, it is reasonable to assume that consequences for intra-EPZ internal populations with KI coverage would be less severe and costly than consequences for intra-EPZ internal populations without KI coverage. Therein rests CRAFT's SAMA EJ contention as set forth in the Petition based upon new and materially different information previously unavailable to the public.

Importantly, regardless of the general parameters and sizes of U.S. versus Canadian EPZs and regardless of Canada's sovereignty over its own portion of the 10-mile Fermi EPZ, it remains a fact that DTE's Fermi 2 SAMA analysis considered a 50-mile radius of international scope. While it may be conservative not to take credit for the KI program in the calculation of overall accident consequences in the SAMA analysis, it is not conservative, and it is in fact unreasonable modeling, to use a methodology that assumes a uniform implementation of KI coverage programs across the affected area. CRAFT's pleading explains why alternative inputs and methodologies are warranted in this plant-specific, site-specific Fermi 2 SAMA analysis which proclaims to analyze a region of international scope. CRAFT argues that materially new

and different conditions exist within the region of SAMA analysis such that an alternative analysis would be more accurate and meaningful, particularly if the analysis could be viewed in subsections exposing demographic disparities of KI coverage indicating an environmental injustice within the analyzed region. Thus, CRAFT’s pleading does raise a genuine material dispute with the Applicant, and therefore, CRAFT stands by its pleading that “fundamental changes are warranted for any SAMA analysis which fails to incorporate [reasonable] inputs and methodologies pertaining to KI coverage. ... the Applicant’s ... assumptions pertaining to KI coverage ... yield [] an unreasonable SAMA analysis.”

DTE’s incomplete Answer, which inexcusably fails to mention CRAFT’s environmental justice contention proffered in its new Petition, continues an Applicant pattern that previously led to an ASLB (Board) admission of a different CRAFT contention at the initial stage of this proceeding. (CRAFT Contention 8). Ironically, CRAFT Contention 8 is based, in part, on Answer and Reply Briefs which exposed through DTE’s conspicuous omission that DTE had failed to accurately consider the Canadian portion of its Fermi 2 SAMA analysis. Furthermore, the in-scope issue of environmental justice (EJ) under NEPA is an underlying aspect of not only this newly proposed SAMA EJ contention but also of another Board-admitted CRAFT contention from earlier in this proceeding. (CRAFT Contention 2 regarding the cross-border sovereign Walpole Island First Nation). Thus, much like CRAFT Contentions 2 and 8, CRAFT’s new proposed SAMA EJ contention warrants further review starting with oral argument before the Board.

Regarding the timeliness requirements for FSEIS-based migrated contentions and more importantly regarding a licensee’s honor in the community, CRAFT objects to DTE’s implied claim (DTE Answer at 5, n. 6) that closing the record effectively nullified and voided the

Board's Initial Scheduling Order to govern this proceeding (ASLBP Order, February 2015). Notably, the Board's Order (at 3) defined timely "good cause" as being a viable alternative to the customary thirty-day rule for timeliness. CRAFT's new pleading demonstrates "good cause." CRAFT's own legal interpretation holds that there was a process agreement made in good faith between the opposing parties at the outset. It now appears that DTE has reneged before the end of the license renewal application process. The Commission disfavors the straying from strict practice and procedure as DTE has allowed itself to do.

Likewise, CRAFT objects to DTE's attempt to blame CRAFT for the premature and unwarranted decision to terminate the proceeding and close the record in the first place. The truly "extraordinary action" in progress is not CRAFT's attempt to reopen an adjudicatory record for "additional hearings" when no hearing has ever been granted, but rather DTE's methodical attempt to stall and prevent the quick and complete implementation of Fukushima Lessons Learned. (DTE Answer at 6). The Commission should duly enable the full consideration of such "exceptionally grave" issues raised rather than erect overwhelmingly heavy procedural barriers which serve no "good cause." (NRC Staff Answer and 10 CFR Parts 2.309, 2.326, and 2.323).

CRAFT's new pleading meets the specificity requirements for *pro se* Petitioners in accordance with decades of case law. CRAFT provides a sufficient level of evidence to warrant a hearing and further review. CRAFT's arguments are not based on mere speculation but rather on factual empirical observations and data gleaned from the real world. Unlike DTE's Answer, the premise of which relies entirely on computer models and bare assertions in the form of input assumptions, CRAFT's Petition arguments are based on the actual global history of nuclear power plant operations and real events.

CRAFT's Reply Brief is a sound document which will assist in developing a sounder record and does not conflict with the restrictions set forth in 10 CFR Part 2.323. The NRC Staff Answer demonstrates that the conspicuous incompleteness of DTE's Answer cannot be excused nor blamed on CRAFT. Rather, the detailed amplifications provided in CRAFT's Combined Reply to support CRAFT's Petition and rebut the Answers are entirely permissible arguments. CRAFT's Reply Brief proffers no fundamentally new arguments and no new bases. To illustrate this point, a truly genuine new argument and base proffered in this Reply Brief would look something like the following legitimate evidence-based claims placed in front of the conclusion.

#### **Safety contention (Part 54):**

CRAFT contends that a disturbing pattern of Fermi 2 Plant Operating License Event Reports (LERs) issued subsequent to DTE's LRA filing, including a reported "scram with complications," calls into question the credibility of DTE's LRA Aging Management Programs (AMPs) intended to provide adequate protection and reasonable assurance of safe operations during the license renewal period. The claim that DTE's Fermi 2 AMPs are sufficient to effectively manage age-related degradation for safety-related passive SSCs under Part 54 in order to ensure continued reliable safe operations is weak.

#### **Environmental contention (Part 51):**

CRAFT contends that the NRC Staff's Final SEIS in this matter, by definition, fails to comply in full with the CEQ's Final Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews (CEQ Memo to U.S. NRC, et al., August

1, 2016). Moreover, while the Final SEIS does include a limited consideration of climate change impacts to the proposed project and to the affected environment and resources of concern, it does not provide the level of specificity and detailed analysis envisioned by the CEQ's 2010 Draft Guidance or by the Final CEQ Memorandum. CRAFT contends that although it is the NRC Staff's duty, not the Applicant's, to comply with NEPA given that NEPA applies to federal government agencies, the Applicant's LRA SAMA analysis is an environmental mitigation analysis under NEPA and 10 CFR Part 51 within the scope of a license renewal review. Therefore, to the extent that the NRC Staff's FSEIS is deficient, CRAFT argues that DTE's original ER migrated through the FSEIS is equally deficient. Further review is warranted.

## CONCLUSION

Concerning the argument that Intervenors' motion is fatally defective for want of an affidavit under 10 C.F.R. §2.326, the NRC has recognized that another party's document could substitute for the affidavit requirement. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-124, 6 AEC 358, 364 (1973) (Staff document raised significant safety issues on its face, so Appeal Board indicated that the affidavit requirement could be bypassed). Here, the documents cited by Intervenors do not require authentication, and neither the Staff nor DTE are making an issue about the substance of the evidence, choosing instead to make much about the supposed improper procedure which brings it into the record.

A larger issue looms here than addressing the minutiae of procedure. If one looks past the arguing over lack of an affidavit from Intervenors, this matter is grave enough that the panel should *sua sponte* grant a hearing on the motion. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), ALAB-738, 18 NRC 177, 188 n.17 (1983); *Houston Lighting & Power*

*Co.* (South Texas Project, Units 1 & 2), LBP-85-19, 21 NRC 1707, 1723 (1985). The Board has broader responsibilities than do adversary parties, and the timeliness test of *Vermont Yankee* does not apply to the Board with the same force as it does to parties. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83, 85 (1978).

At its essence, Intervenors have repeatedly sought for a simple, comparatively inexpensive step to be taken - provisions for the ready availability of potassium iodide for those inhabiting the relevant part of the emergency planning zone. DTE and the NRC Staff have hyped an inexpensive step which would have enormous potential humanitarian consequences (and indirectly, public health monetary savings) into a battle royal over SAMA. That is a diversion. The claimed conservatism of computerized assessment is being used to obscure the fact that the utility and Staff care vanishingly little that neighbors of the plant could readily become victims of it.

Intervenors have established sufficient information. The Board need not search for evidence to support their case. Intervenors have submitted information which raises a serious safety issue. The Board must keep its broader responsibility in mind and grant a hearing on the motion, *sua sponte*. The public is essentially being told to swallow logarithms instead of pills, but only one can prevent a possibly life-threatening encounter with radioactive iodine.

In conclusion, for the above reasons, the Commission should grant CRAFT's Consolidated Motions and Request for a Hearing for a Proposed New Contention in this relicensing matter. CRAFT's Petition to Intervene raises an environmental justice issue within the scope of this license renewal proceeding, raises a genuine material dispute with the Fermi 2 ER SAMA analysis, is supported with sufficient specificity for a *pro se* Petitioner, and shows

timely “good cause” pertaining to the “exceptionally grave” issue of Fukushima Lessons Not Learned.

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DTE Electric Company ) December 8, 2016  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing “CRAFT’S MOTION TO REOPEN THE RECORD OF LICENSE RENEWAL PROCEEDING FOR FERMI UNIT 2 NUCLEAR POWER PLANT” were served by me upon the parties to this proceeding via deposit into the NRC’s Electronic Information Exchange system this 8th day of December, 2016. This document is also being submitted as matter of courtesy to email addresses of NRC and DTE Attorneys and to the Hearing Docket Secretary

Respectfully submitted,

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