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Signed at Washington, DC this 5th day of August, 2004.

**John Frank,**

*Acting Chief, Branch of Construction Wage Determination.*

[FR Doc. 04-18303 Filed 8-12-04; 8:45 am]

BILLING CODE 4510-27-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

### **Detroit Edison Company; Fermi 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (the licensee), for operation of Fermi 2 located in Monroe County, Michigan.

The proposed amendment would (1) add License Condition 2.C.(22) requiring an integrated tracer gas test of the control room envelope using methods described in American Society for Testing and Materials E741-00, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution," and (2) delete Surveillance Requirement (SR) 3.7.3.6, which requires verification that unfiltered inleakage from control room emergency filtration system duct work outside the control room envelope is within limits. The proposed amendment was submitted by application dated July 30, 2004.

The July 30, 2004, application supersedes the licensee's previous application dated March 31, 2003, in its entirety. The March 31, 2003, application was previously noticed in the **Federal Register** on May 27, 2003 (68 FR 28848).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to add a License Condition for tracer gas testing and eliminate SR 3.7.3.6. The Control Room Emergency Filtration (CREF) system provides a configuration for mitigating radiological consequences of accidents; however, it is not considered an initiator of any previously analyzed accident. Therefore, the proposed change cannot increase the probability of any previously evaluated accident.

The CREF system provides a radiologically controlled environment from which the plant can be safely operated following a radiological accident. The current TS surveillance (SR 3.7.3.6) measures inleakage from four sections of CREF system duct work outside the Control Room Envelope (CRE) that are at negative pressure during accident conditions. Performance of tracer gas testing will provide essentially the same degree of assurance that CRE integrity is being maintained as before. Therefore, the proposed change does not significantly increase the radiological consequences of any previously analyzed accident.

Based on the above, the proposed change does not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to add a License Condition for tracer gas testing and to eliminate SR 3.7.3.6 does not alter the design or function of the system involved, nor does it introduce any new modes of plant or CREF system operation. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change to add a License Condition for tracer gas testing and to eliminate SR 3.7.3.6 will not affect the radiological release from a design basis accident. The postulated dose to the control room occupants as a result of an accident will remain approximately the same. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or

copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, 2.304, and 2.305 which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The

petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

A request for a hearing and a petition for leave to intervene must be filed by:

(1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, or expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A request for hearing and petition for leave to intervene filed by e-mail or facsimile transmission need not comply with the requirements of 10 CFR 2.304 (b)(c) and (d) if an original and two (2) copies otherwise comply with the requirements of Section 2.304 are mailed within two (2) days, of the filing by e-mail or facsimile transmission to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by email to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226-1279, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 30, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR

Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 6th day of August 2004.

For the Nuclear Regulatory Commission.

**David P. Beaulieu,**

*Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-18510 Filed 8-12-04; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

### NRC Enforcement Policy; Alternative Dispute Resolution

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Action) to include an interim enforcement policy regarding the use of Alternative Dispute Resolution (ADR) in the enforcement program for discrimination and other wrongdoing cases.

The Commission published a proposed pilot program to address the use of ADR in the enforcement program in the **Federal Register** (69 FR 21166) on April 20, 2004. The Commission received input from the public, in response to 69 FR 21166, expressing their support for the pilot program and providing comments.

**DATES:** The ADR process will be implemented in a phased approach. Because only the licensee and the NRC are involved in ADR after an OI investigation is complete, the staff will begin offering the opportunity to engage in ADR during the post investigation enforcement process upon issuance in the **Federal Register**. The staff will begin offering early ADR to whistleblowers who have established a *prima facie* case of discrimination approximately 30 days after the issuance of the **Federal Register** notice. The additional delay will allow the staff to complete the development of a brochure providing additional information regarding ADR in general and the NRC's program in particular. Comments on this revision to the Enforcement Policy may be submitted on or before September 13, 2004.

**ADDRESSES:** Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Nick Hilton, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-3055, e-mail [ndh@nrc.gov](mailto:ndh@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC received 11 sets of comments in response to the proposed pilot program published in the **Federal Register** on April 20, 2004. All of the commentors were either power reactor licensees or representatives of power reactor licensees. All commentors supported the pilot program with most offering that the comments provided either clarification opportunities or thoughts for future consideration after the pilot has operated for a period of time. The comments are available in their entirety on the Office of Enforcement's ADR Web page at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html#comments>.

The following is a synopsis of stakeholder comments received regarding the proposed ADR pilot program and the NRC response to the suggested changes.

*Comment:* The NRC should reconsider the treatment of an ADR settlement occurring after a formal enforcement action is taken (e.g., a notice of violation (NOV) is issued) as a factor in determining a future escalated enforcement (civil penalty) amount. The proposed Interim Enforcement Policy on the use of ADR stated that settlements occurring after a formal enforcement action is taken will count as an enforcement case for purposes of determining whether identification credit is considered when assessing the amount of a civil penalty.

*Response:* The NRC would allow the status of a particular case being mediated to be negotiated during the dispute resolution session. Therefore, to allow greater flexibility, the NRC revised Section IV.A of the interim policy to state that, "settlements under the enforcement ADR program occurring after a formal enforcement action is

taken (e.g. an NOV is issued) may count as an enforcement case for purposes of determining whether identification credit is considered" (emphasis added).

*Comment:* A press release should not be issued for those cases where an agreed upon settlement is reached through ADR after the Office of Investigations (OI) completes its investigation given that a confirmatory order is made public for such cases.

*Response:* A press release is standard agency practice when issuing an order. In many cases, the public may be aware of the issue through previous news articles for cases that had a proposed civil penalty, documents contained in ADAMS, the **Federal Register**, or OE Web page. The press release will serve to publically close out the issue, and increase the acceptance and public confidence in the ADR process.

*Comment:* The policy should be flexible enough to allow for a cooling off period prior to attempting to resolve the dispute through ADR without impacting the 90-day time frame for Early ADR.

*Response:* The process of notifying the NRC, establishing a *prima facie* case, agreeing to mediate, choosing a mediator, and scheduling the mediation session should be of sufficient duration to allow both parties an ample cooling off period. One purpose of the NRC program is to achieve a timely resolution. A delay in the implementation of the process may also put undue pressure on the employee due to the Department of Labor (DOL) timeliness requirements, lengthen potential unemployment time, etc.

*Comment:* An OI investigation or enforcement action should not be initiated if a settlement between the parties has been reached in principle.

*Response:* In Early ADR, the case is not referred to OI until after the neutral returns the case back to the NRC.

However, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. The NRC may allow a small extension to the 90-day limit to allow for completion of a settlement agreement.

*Comment:* The NRC should monitor the ADR process to ensure it is not abused by employees since the process could create an artificial incentive for employee's to seek ADR for a claim of discrimination during the pilot program.

*Response:* Prior to entering into ADR, an employee must articulate, and an Allegation Review Board must then determine that, a *prima facie* case exists. In addition, a licensee's involvement in ADR is voluntary. If a licensee believes that the other party is attempting to abuse the ADR process, they do not have to agree to participate. The NRC