



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

East Lansing Field Office (ES)  
2651 Coolidge Road, Suite 101  
East Lansing, Michigan 48823-6316

IN REPLY REFER TO:

February 13, 2012

Mr. Walter Gauthier,  
Chief, Permit Evaluation Eastern Branch  
Regulatory Office  
U.S. Army Corps of Engineers, Detroit District  
P.O. Box 1027  
Detroit, MI 48231-1027

Re: Corps File No. LRE-2008-00443-1-S11, applicant Detroit Edison Company

Dear Mr. Gauthier:

We have reviewed the Public Notice for the above referenced file, concerning an application for a Department of the Army (DA) permit, pursuant to section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act. We submit these comments under the authority of the Fish and Wildlife Coordination Act and the Endangered Species Act of 1973, as amended (Act) and in accordance with the Bald and Golden Eagle Protection Act of 1940, as amended (Eagle Act), the Migratory Bird Treaty Act of 1918, as amended (MBTA), and the Service's Mitigation Policy.

According to the Public Notice, the applicant proposes to perform site preparation activities and construct support facilities associated with the proposed Enrico Fermi Unit 3 (Fermi 3) nuclear power plant. Activities and facilities would impact approximately 29 acres of wetlands under the regulatory jurisdiction of the U.S. Army Corps of Engineers (ACOE). Facilities to be constructed within this wetland include, but are not limited to, a cooling tower discharge pipe, a temporary cofferdam, a water intake structure and associated shoreline protection, a barge unloading facility, and a fish return. The proposed project would occur at 6400 North Dixie Highway, within the Detroit Edison site containing Enrico Fermi Unit 2 (Fermi 2) nuclear power plant, Monroe County, Michigan.

### **Fish and Wildlife Coordination Act Comments**

Approximately 29 acres of wetlands under the jurisdiction by the Army Corps of Engineers would be affected from the construction of this project as currently proposed. Of that acreage, 16 acres will be temporarily disturbed and will be restored. Approximately 13 acres would be permanently lost at the site.

To mitigate for unavoidable wetland loss, the applicant has developed an aquatic resource mitigation plan that includes restoring or enhancing approximately 107 acres of wetland offsite in the coastal zone of Western Lake Erie approximately 7.5 miles to the southwest near the Plaisance Bay. We agree conceptually with the proposed mitigation plan.

### Migratory Birds

The applicant has proposed to install a closed-circuit cooling system with a cooling tower for Fermi 3. This closed system can significantly reduce the water use by 96 to 98% and significantly reduce the impingement or entrainment of aquatic organisms. The applicant has also proposed a through-screen velocity of 0.5 ft/s or less under all operating conditions, which should also reduce entrainment and impingement. This system allows impinged organisms to be washed from the traveling screens to be directed back to Lake Erie via a fish return system. We laud these measures to reduce entrainment and impingement of fish, but we have concerns about impingement of diving ducks. Water intake structures at other nuclear power plants in the Great Lakes have been known to impact this group of birds. Specifically, diving ducks may be attracted to the water intake structures to feed on the quagga or zebra mussels that can colonize the intake and the surrounding substrate. The Public Notice does not state the proposed depth of the intake, but we recommend the intake should be at least 20 feet below the water surface to avoid impacts to this group of birds.

The DEIS associated with this project identifies several species of woodland and grassland bird species that fall under protection of the Migratory Bird Treaty Act (MBTA). Because the proposed project site very likely provides nesting habitat, we have concerns that the proposed project may impact migratory birds. Under the MBTA, it is unlawful to take, capture, kill, or possess migratory birds, their nests, eggs, or young. We recommend that removal of potential nesting habitat associated with the proposed project be completed before spring nesting begins or initiated after the breeding season has ended to avoid take of migratory birds, eggs, young, and/or active nests. Specifically, we recommend that no habitat disturbance, destruction, or removal occur between April 15 and August 15 to minimize potential impacts to migratory birds during their nesting season, but please be aware that some species may initiate nesting before April 15.

### Bald Eagles

A known bald eagle territory also overlaps the Fermi 3 project boundary. As outlined in the Bald Eagle Management Guidelines (<http://www.fws.gov/midwest/eagle/guidelines/guidelines.html>), we recommend no construction activity within a buffer distance of 660 feet from any existing or recently occupied nest if the proposed activity is visible from the nest and/or a resulting structure will be over three stories tall. Because the locations of proposed project-related construction activities appear to fall outside the recommended 660-foot nest buffer around the current active nest, we have determined that this project, at this time, is unlikely to result in take of breeding eagles. This determination should be considered valid only as long as activities associated with the chosen project alternative continue to fall outside of the aforementioned 660-foot buffer around the current active eagle nest and no new eagle nests are identified in the area.

It is worth noting that the breeding pair of eagles that occupy the nearby territory have constructed five nests in the last ten years (resulting in one new nest approximately every other year) on the applicant's property, and have used all but one of them for nesting during that same time period. An unused nest was constructed in 2011 and is likely to be used for breeding at some point in the future. Because these eagles frequently relocate nest sites and because the project start date may be one or several years in the future, predicting impacts to eagles from this project is difficult. As such, we recommend that the applicant remain in close contact with the East Lansing Field Office regarding changes in eagle nest locations. If eagles build a new nest or occupy an inactive nest in the future and project activities cannot be modified to avoid potential disturbance, an eagle take permit under the Bald and Golden Eagle Protection Act (Eagle Act) may be necessary.

Because the project is located in the proximity of eagle foraging and roosting habitat both during breeding and in the winter, we encourage the applicant to implement the following recommendations, along with the above finding, to further avoid impacting bald eagles:

- Minimize potentially disruptive activities (as outlined in the Guidelines) and development in the eagles' direct flight path between any known nests, roost sites and/or important foraging areas.
- Avoid loud, intermittent noises within one-half mile of known eagle nest locations during the breeding season and known eagle use areas when eagles are present.
- Protect and preserve potential roost and nest sites by retaining, when possible, mature trees and old growth stands within one-half mile of water.
- Employ industry-accepted best management practices to prevent birds from colliding with any lines, poles, and tower supports.
- Limit the use pesticides, herbicides, fertilizers, and other chemicals that may adversely affect eagles.

### Endangered Species

Information provided in the Public Notice names nine federally-listed species that may occur in Monroe County, Michigan. Our records indicated that four federally listed species and two species proposed for listing are currently known for Monroe County. Section 7(a)(2) of the Act directs all Federal agencies to determine whether their actions may affect federally listed species for all federally funded, authorized, or licensed projects. Section 7(c) of the Act also requires Federal agencies or their designees to prepare a Biological Assessment (BA) for major construction projects. A major construction project means any major Federal action which significantly affects the quality of the human environment, as referred to in the National Environmental Policy Act (NEPA), and requires preparation of an Environmental Impact Statement.

As the lead Federal agency for the proposed project, the Nuclear Regulatory Commission (NRC) should prepare a BA, analyzing potential effects of the proposed work on federally listed species. However, the ACOE must also ensure compliance with section 7 of the Act prior to issuance of any DA permit for the proposed project. As this time, we have not received a BA from the NRC, and, as such, section 7 compliance has not yet been achieved.

## Summary

We recommend that the ACOE not issue a permit for this proposed project until section 7 consultation under the Act has been completed. We also recommend that the ACOE confirm that the water intake will be of sufficient depth to avoid or reduce impacts to diving ducks. Finally, we recommend that the ACOE include the timing restriction for habitat clearing to protect migratory birds as a condition of any permit issued.

We appreciate the opportunity to provide our resource protection recommendations. For further discussion, please contact James Bettaso of this office at 517/351-5293 or the above address.

Sincerely,



Scott Hicks  
Field Supervisor

cc: MDEQ, Water Resources Division, Lansing, MI (Attn: Colleen O'Keefe)  
NRC, Division of New Reactor Licensing, Washington, DC (Attn: Bruce Olson) ✓