

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF ANSWER TO CRAFT'S MOTION TO REOPEN THE RECORD
AND PETITION TO INTERVENE

Catherine E. Kanatas
Counsel for NRC Staff

December 1, 2016

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	- 1 -
BACKGROUND	- 2 -
DISCUSSION.....	- 3 -
I. Legal Standards	- 3 -
A. Reopening Requirements	- 4 -
B. Requirements for a Contention Filed After the Initial Deadline	- 5 -
C. Contention Admissibility Requirements.....	- 6 -
II. The Motion to Reopen Should Be Denied Because It is Not Supported By an Affidavit, is Untimely, Fails to Raise an Exceptionally Grave Issue, Fails to Raise a Significant Environmental Issue, and Is Not Likely to Result in a Materially Different Outcome	- 8 -
A. CRAFT's Motion Is Not Supported By the Required Affidavit	- 8 -
B. CRAFT's Motion is Untimely and Does Not Raise an Exceptionally Grave Environmental Issue	- 10 -
C. The Motion to Reopen Should be Dismissed Because It Does Not Identify a Significant Environmental Issue	- 15 -
D. The Motion to Reopen Does Not Show That a Materially Different Result Would Be or Would Have Been Likely	- 16 -
III. The Petition to Intervene Should Be Denied Because It Does Not Proffer an Admissible Contention	- 17 -
A. Certain Bases Proffered in Support of the Contention Raise Issues Beyond the Scope of the License Renewal Proceeding	- 18 -
B. The Contention Does Not Raise a Genuine Material Dispute With the SAMA Analysis.....	- 18 -
C. The Contention Lacks an Adequate Basis	- 19 -
D. The Contention Is Untimely	- 20 -
CONCLUSION	- 20 -

TABLE OF AUTHORITIES

Page

ADMINISTRATIVE DECISIONS

COMMISSION:

<i>AmerGen Energy Co., LLC</i> (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235 (2009)	4, 6, 9
<i>Arizona Pub. Serv. Co.</i> (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149 (1991)	7
<i>Dominion Nuclear Connecticut, Inc.</i> (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115 (2009)	4
<i>DTE Electric Co.</i> (Fermi Nuclear Power Plant, Unit 3), CLI-15-01, 81 NRC 1, 10 (2015)	7
<i>DTE Electric Company</i> (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135 (2015)	3
<i>Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479 (2012)	16
<i>Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491 (2012)	15
<i>Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704 (2012)	20
<i>Entergy Nuclear Operations, Inc.</i> (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340 (2015)	18
<i>Entergy Nuclear Operations, Inc.</i> (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321 (2015)	7
<i>Nextera Energy Seabrook, LLC</i> (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301 (2012)	<i>passim</i>

<i>Northern States Power Co.</i> (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481 (2010).....	6, 12
<i>Private Fuel Storage, L.L.C.</i> (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19 (2006).....	15, 16
<i>Private Fuel Storage, L.L.C.</i> (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318 (1999).....	7
<i>Southern Nuclear Operating Co.</i> (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214 (2011).....	6
TVA (Watts Bar Unit 2), CLI-15-19, 82 NRC 151 (2015)	7
<u>ATOMIC SAFETY AND LICENSING BOARD:</u>	
<i>DTE Electric Company</i> (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC 249 (2015).....	2
<i>DTE Electric Company</i> (Fermi Nuclear Power Plant, Unit 2), LBP-15-25, 82 NRC 161 (2015).....	3
<i>Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.</i> (Pilgrim Nuclear PowerStation), LBP-06-23, 64 NRC 257 (2006).....	8
<i>Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.</i> (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529 (2010).....	10, 17
<i>Exelon Generation Co., LLC</i> (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539 (2012).....	8
<i>Nextera Energy Seabrook, LLC</i> (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604 (2011).....	8
<u>ATOMIC SAFETY AND LICENSING APPEAL BOARD:</u>	
<i>Pacific Gas and Electric Co.</i> (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361 (1984)	5
<u>REGULATIONS:</u>	
10 C.F.R. § 2.309.....	4
10 C.F.R. § 2.309(a)	6

10 C.F.R. § 2.309(c)	5, 6, 20
10 C.F.R. § 2.309(f)	6
10 C.F.R. § 2.309(f)(1)	4, 7, 8
10 C.F.R. § 2.309(f)(1)(i)-(vi)	7
10 C.F.R. § 2.309(f)(1)(iii)	7
10 C.F.R. § 2.309(f)(1)(vi)	8
10 C.F.R. § 2.309(i)	1
10 C.F.R. § 2.323(c)	1
10 C.F.R. § 2.326	3, 4
10 C.F.R. § 2.326(a)	4, 5, 10
10 C.F.R. § 2.326(a)(1)	10
10 C.F.R. § 2.326(a)(2)	15, 16
10 C.F.R. § 2.326(a)(3)	16, 20
10 C.F.R. § 2.326(b)	<i>passim</i>
10 C.F.R. § 2.326(d)	5
10 C.F.R. § 2.335(c)	7
10 C.F.R. § 2.335(e)	7
10 C.F.R. § 2.802	7
10 C.F.R. § 50.47(a)(1)	18
10 C.F.R. § 51.53(c)(3)(ii)(L)	2, 9
10 C.F.R. § 51.92(a)	16

MISCELLANEOUS :

Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,536 (May 30, 1986) (Final Rule)	15
Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (Final Rule)	8
56 Fed. Reg. 64,943, 64,966-67 (Dec. 13, 1991)	18
79 Fed. Reg. 34,787 (June 18, 2014)	2
81 Fed. Reg. 67,348 (Sept. 30, 2016)	3
Memorandum from William M. Dean to Chairman Burns, Commissioner Svinicki, and Commissioner Baran, Renewal of Full-Power Operating License for Fermi 2 (Nov. 9, 2016) (ADAMS Accession No. ML16270A270)	3
Memorandum from William M. Dean to Chairman Burns, Commissioner Svinicki, and Commissioner Baran, Update to Renewal of Full-Power Operating License for Fermi 2 (Nov. 28, 2016) (ADAMS Accession No. ML16330A117)	3

NUREG-1437, Supplement 56, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Fermi 2 Nuclear Power Plant," (ADAMS Accession No. ML16259A103 for Volume 1 and No. ML16259A109 for Volume 2).....	3
---	---

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
DTE ELECTRIC COMPANY) Docket: 50-341-LR
(Fermi Nuclear Power Plant, Unit 2))

NRC STAFF ANSWER TO CRAFT'S MOTION TO REOPEN THE RECORD
AND PETITION TO INTERVENE

INTRODUCTION

In accordance with 10 C.F.R. §§ 2.309(i) and 2.323(c), the U.S. Nuclear Regulatory Commission ("NRC") staff ("Staff") respectfully submits its answer to the Citizen's Resistance at Fermi 2 ("CRAFT") Petition to Intervene and Motion to Reopen the Record¹ filed in the Fermi Nuclear Power Plant Unit 2 ("Fermi 2") license renewal proceeding on November 21, 2016.² CRAFT asserts that the Final Supplemental Environmental Impact Statement ("FSEIS") is inadequate because it "does not adequately address [severe accident mitigation alternatives ("SAMA")] Analysis as it pertains to potassium iodide ["KI"] distribution in the Primary Emergency Planning Zone (EPZ) and Secondary EPZ."³

CRAFT's Motion to Reopen should be denied because it is not supported by an affidavit, was not submitted in a timely manner, does not address a significant environmental matter, and

¹ Citizen's Resistance at Fermi 2 (CRAFT)'s Consolidated Motion to Reopen the Record of License Renewal Proceeding and to File a New Contention for Fermi Unit 2 Nuclear Power Plant, (Nov. 21, 2016) ("Motion to Reopen"); Citizens' Resistance at Fermi 2 (CRAFT) Motion Requesting Leave to File a New Contention Based On New and Existing SAMA Considerations of Potassium Iodide Distribution In the Primary EPZ and Secondary EPZ, (Nov. 21, 2016) ("Petition to Intervene"). CRAFT's initial filing is available at Agencywide Documents Access and Management System ("ADAMS") Accession No. ML16326A448.

² On November 25, 2016, CRAFT filed an errata and corrected Motion to Reopen. See ADAMS Accession No. ML16330A688 (Motion) and ADAMS Accession No. ML16330A689 (Errata). This answer refers to the corrected Motion to Reopen.

³ Motion to Reopen at 1. See *also* Petition to Intervene at 8. "Mitigation alternatives, or 'SAMAs,' refer to potential safety enhancements intended to reduce the risk of severe accidents." *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322 (2012).

does not demonstrate that a materially different result would be or would have been likely if the proposed new contention had been raised at the beginning of the proceeding. As discussed below, CRAFT does not demonstrate that the FSEIS is inadequate, that the SAMA analysis is unreasonable, or that its proffered contention is admissible. CRAFT's Petition to Intervene should be denied because it is untimely, raises issues outside the scope of this license renewal proceeding, does not raise a genuine material dispute with the application, and lacks adequate support.

BACKGROUND

This proceeding concerns DTE Electric Company's ("DTE") April 24, 2014, application to renew its operating license for Fermi 2 for an additional twenty years from the current expiration date of March 20, 2025.⁴ DTE's license renewal application ("LRA") included a SAMA analysis as required by 10 C.F.R. § 51.53(c)(3)(ii)(L).⁵ The Federal Register notice of hearing and opportunity to petition for leave to intervene in this proceeding was issued on June 18, 2014.⁶ CRAFT timely filed a petition to intervene, proffering several contentions;⁷ the Atomic Safety and Licensing Board ("Board") found that CRAFT had standing and admitted two contentions.⁸ Upon review, the Commission reversed the Board's contention admissibility decision and

⁴ LRA at 1-1. If the LRA is approved, Fermi-2's new license expiration date would be March 20, 2045. *Id.* at 1-6. Fermi 2 is a boiling-water reactor designed by General Electric and is located near Frenchtown Township, Monroe County, Michigan.

⁵ DTE's SAMA analysis, submitted as part of its LRA, is available at ADAMS Accession No. ML14121A540. "The SAMA analysis is an environmental mitigation analysis under NEPA, and is not part of the license renewal safety review." *Seabrook*, CLI-12-5, 75 NRC at 323.

⁶ DTE Electric Company; Fermi 2, License renewal application; opportunity to request a hearing and to petition for leave to intervene, 79 Fed. Reg. 34,787 (June 18, 2014).

⁷ See Citizens' Resistance at Fermi 2 (CRAFT) Petition for Leave to Intervene and Request for a Public Hearing Upon DTE Electric's Request of 20-Year License Extension for the Enrico Fermi 2 Nuclear Reactor (Aug. 18, 2014) (ADAMS Accession No. ML14231B142).

⁸ *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 81 NRC 249, 254, 308 (2015) (admitting narrowed versions of CRAFT's contentions 2 (notice to the Walpole Indian Tribe) and 8 (SAMAs are materially deficient)). The Board also admitted a contention proffered by another petitioner. *Id.* at 307.

directed the Board to terminate the proceeding.⁹ The Board terminated the proceeding on September 11, 2015.¹⁰

As relevant here, the Staff prepared and published the Draft Supplemental Environmental Impact Statement ("DSEIS") for the Fermi 2 license renewal in October 2015 and the FSEIS in September 2016.¹¹ Both the DSEIS and FSEIS had a section providing the Staff's evaluation of DTE's SAMA analysis.¹² On November 9, 2016, the Staff notified the Commission that it intended to issue the renewed license for Fermi 2 on November 29, 2016.¹³ On November 21, 2016, CRAFT filed its Motion to Reopen and Petition to Intervene.¹⁴ On November 25, 2016, CRAFT filed a corrected Motion to Reopen and errata.

DISCUSSION

I. Legal Standards

To be admitted in this closed proceeding, a new contention must meet: the reopening requirements of 10 C.F.R. § 2.326; the requirements for a contention filed after the initial

⁹ *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 139, 150 (2015).

¹⁰ *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 2), LBP-15-25, 82 NRC 161, 161 (2015).

¹¹ NUREG-1437, Supplement 56, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Fermi 2 Nuclear Power Plant," (ADAMS Accession No. ML16259A103 for Volume 1 and No. ML16259A109 for Volume 2). The FSEIS was made publically available in ADAMS on September 16, 2016, and was noticed in the *Federal Register* on September 30, 2016. See 81 Fed. Reg. 67,348 (Sept. 30, 2016).

¹² FSEIS § 4.11.1.2, App. F; DSEIS § 4.11.1.2, App. F. See *also* Environmental Report App. D.

¹³ See Memorandum from William M. Dean to Chairman Burns, Commissioner Svinicki, and Commissioner Baran, Renewal of Full-Power Operating License for Fermi 2 (Nov. 9, 2016) (ADAMS Accession No. ML16270A270).

¹⁴ See *infra* at n.1. On November 28, 2016, the Staff notified the Commission that it would not issue the renewed license on November 29, 2016, and would submit a SECY paper to the Commission providing the Staff's recommended path forward. See Memorandum from William M. Dean to Chairman Burns, Commissioner Svinicki, and Commissioner Baran, Update to Renewal of Full-Power Operating License for Fermi 2 (Nov. 28, 2016) (ADAMS Accession No. ML16330A117).

deadline set out in subsection (c) of 10 C.F.R. § 2.309; and all of the requirements for an admissible contention under 10 C.F.R. § 2.309(f)(1).¹⁵

A. Reopening Requirements

The standards for opening the record in a closed proceeding are in 10 C.F.R. § 2.326. Section 2.326(a) states that a motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

The Commission has held that the “burden of satisfying the reopening requirements is a heavy one, [and] proponents of a reopening motion bear the burden of meeting all of [these] requirements.”¹⁶

Section 2.326(b) requires a motion to reopen to be accompanied by one or more affidavits showing that the motion to reopen meets the three criteria in § 2.326(a).¹⁷ Each affidavit must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.¹⁸ “When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the

¹⁵ See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009) (stating that a petitioner seeking to introduce a new contention after the record has been closed must “address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing.”).

¹⁶ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (internal quotations omitted).

¹⁷ 10 C.F.R. § 2.326(b).

¹⁸ *Id.* See also *Oyster Creek*, CLI-09-7, 69 NRC at 291-93.

factual and/or technical bases which it believes support the claim that this issue meets the criteria in [2.326(a)].”¹⁹ In order to overcome the strict re-opening requirements, the movant must provide “more than mere allegations; it must be tantamount to evidence.”²⁰

Finally, section 2.326(d) provides that a motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the requirements in 10 C.F.R. § 2.309(c) for contentions submitted after the original deadline for filing.

B. Requirements for a Contention Filed After the Initial Deadline

Section 2.309(c) provides that contentions filed after the deadline will not be entertained absent a determination by the presiding officer that the proponent of the contentions has demonstrated good cause by showing that the:

- (i) information upon which the filing is based was not previously available;
- (ii) information upon which the filing is based is materially different from information previously available; and
- (iii) filing has been submitted in a timely fashion based on the availability of the subsequent information.

Whether a contention is timely filed depends in large part on when the new information became available. The Commission generally considers a contention based on new information to be filed in a timely fashion if the contention is filed within 30 days of the availability of the new information.²¹

¹⁹ 10 C.F.R. § 2.326(b).

²⁰ *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366 (1984).

²¹ In the proceeding before the Board, the Board provided that in general, a proposed new, amended, or migrated contention is timely under 10 C.F.R. § 2.309(c) if it was filed within 30 days of the date when the new and material information on which it was based first becomes available. With respect to new, amended, or migrated contentions based on new and material information in the SESIS, FSEIS, SER with open items, and final SER, the Board’s scheduling order provided that a proposed contention shall be deemed timely under 10 C.F.R. § 2.309(c) if it was filed within 60 days of the date when the document containing the new and material information first became available. Initial Scheduling Order (Feb. 27, 2015) at 3 (ADAMS Accession No. ML15058A703).

When information is later repeated in a Staff document, the date that controls for timeliness purposes is the date that the information first became available, not the later date when the Staff collected, summarized and placed into context the facts supporting the contention.²² The Commission does not permit petitioners to wait for the Staff to compile all relevant information in a single document as doing so improperly ignores petitioners' obligation to conduct their own due diligence.²³

C. Contention Admissibility Requirements

In addition to meeting the requirements in 10 C.F.R. § 2.309(c), a contention filed after the initial deadline must meet the contention admissibility requirements in 10 C.F.R. § 2.309(f).²⁴

For each contention, the petitioner shall:

- (1) provide a specific statement of the issue of law or fact to be raised or controverted;
- (2) provide a brief explanation of its basis;
- (3) demonstrate that the issue raised is within the scope of the proceeding;
- (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
- (6) provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material

²² *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010). See also *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 224-225 (2011).

²³ *Prairie Island*, CLI-10-27, 72 NRC at 496. See also *Oyster Creek*, CLI-09-7, 69 NRC 271-72 (noting that the contention admissibility and timeliness rules require a high level of discipline and preparation by petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset).

²⁴ 10 C.F.R. § 2.309(a).

issue of law or fact, with references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.²⁵

The Commission has emphasized that the 10 C.F.R. § 2.309(f)(1) contention admissibility requirements are "strict-by-design."²⁶ Failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for dismissing the proposed contention.²⁷

Contentions must raise an issue that is within the scope of the proceeding.²⁸ Absent a waiver of the rule in the particular proceeding, challenges to the Commission's regulations and generic determinations are beyond the scope of NRC adjudications.²⁹ If the presiding officer determines that the petitioner has not made the required *prima facie* showing for a rule waiver, "no evidence may be received on [the] matter and no discovery, cross examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter."³⁰ Instead, the participant may challenge the rule by filing a petition for rulemaking under 10 C.F.R. § 2.802.³¹

²⁵ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

²⁶ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325 (2015).

²⁷ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999), *citing Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

²⁸ 10 C.F.R. § 2.309(f)(1)(iii).

²⁹ *TVA* (Watts Bar Unit 2), CLI-15-19, 82 NRC 151, 157 (2015); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-01, 81 NRC 1, 10 (2015).

³⁰ 10 C.F.R. § 2.335(c).

³¹ 10 C.F.R. § 2.335(e).

Contentions must also raise a genuine material issue of law or fact with the challenged application.³² In other words, the proponent on the contention must show how resolution of the dispute would make a difference in the outcome of the licensing proceeding.³³ A contention that raises only a generic issue and fails to link that issue to any specific aspect of the pertinent application is inadmissible for failure to raise a genuine material issue.³⁴ While a disagreement as to the interpretation of the language of a rule may raise a genuine issue of law, a challenge to the rule itself does not.³⁵ Such a challenge fails because it does not raise a material issue of law as contemplated by the regulation.

II. The Motion to Reopen Should Be Denied Because It is Not Supported By an Affidavit, is Untimely, Fails to Raise an Exceptionally Grave Issue, Fails to Raise a Significant Environmental Issue, and Is Not Likely to Result in a Materially Different Outcome

CRAFT's Motion to Reopen should be denied because it is not supported by an affidavit, is untimely, fails to raise an exceptionally grave issue, fails to raise a significant environmental issue, and does not demonstrate that a materially different result would have been likely if the proposed new contention had been raised at the beginning of the proceeding. Thus, CRAFT's Motion to Reopen does not meet the reopening standards and should be denied.

A. CRAFT's Motion Is Not Supported By the Required Affidavit

CRAFT's Motion to Reopen should be denied because it is not supported by an affidavit. A motion to reopen "must be accompanied by affidavits that set forth the factual and/or technical

³² 10 C.F.R. § 2.309(f)(1)(vi).

³³ *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear PowerStation), LBP-06-23, 64 NRC 257, 354 (2006), *citing* Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (Final Rule).

³⁴ *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-28, 74 NRC 604, 609 (2011).

³⁵ *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 566 (2012), *rev'd in part*, CLI-12-19, 76 NRC 377 (2012), *remanding* LBP-13-1, 77 NRC 57 (2013), *aff'd on other grounds*, CLI-13-7, 78 NRC 199 (2013).

bases for the movant's claim that the ... [three criteria for reopening] have been satisfied.”³⁶

CRAFT’s Motion to Reopen is not supported by any affidavits. CRAFT states that it “has not submitted affidavits, because the bases for this motion are purely legal.”³⁷ However, CRAFT’s allegations are factual in nature because they relate to the adequacy of DTE’s SAMA analysis and the Staff’s FSEIS.³⁸ As the Commission has noted, “SAMA analysis involves extensive computer modeling, and therefore may involve issues not readily understood by those not familiar with the computer codes and methodologies that are used.”³⁹

To support reopening the closed record in this proceeding, CRAFT must do more than make bare assertions that the FSEIS and DTE’s SAMA analysis does not comply with NEPA and that the reopening standards are met.⁴⁰ CRAFT must provide statements made by “competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.”⁴¹ Because CRAFT has not done so, its Motion to Reopen should be denied.

Further, CRAFT has not identified with particularity each issue it seeks to litigate or specified the factual and/or technical bases which it believes support the claim that the issue

³⁶ 10 C.F.R. § 2.326(b). *See id.* (“Evidence contained in [the] affidavits must meet the admissibility standards [in 10 C.F.R. § 2.337].”).

³⁷ Motion to Reopen at 4.

³⁸ A possible legal challenge could be whether a SAMA was required or not. *See* 10 C.F.R. § 51.53(c)(3)(ii)(L) (providing an exception for certain plants).

³⁹ *Seabrook*, CLI-12-5, 75 NRC at 323.

⁴⁰ Motion to Reopen at 2-3 (making unsupported claims that the FSEIS does not comply with NEPA). Petition to Intervene at 9 (stating that “CRAFT is confident that calculations of severe accident consequences are highly sensitive to the proper and due consideration of an affected community’s KI distribution program.”).

⁴¹ 10 C.F.R. § 2.326(b). *See also Oyster Creek*, CLI-09-7, 69 NRC at 291-93.

meets the three reopening criteria in 10 C.F.R. § 2.326(a).⁴² Therefore, CRAFT's Motion to Reopen should be denied.

B. CRAFT's Motion is Untimely and Does Not Raise an Exceptionally Grave
Environmental Issue

CRAFT's Motion to Reopen should also be denied because it is untimely and does not raise an exceptionally grave environmental issue. Under 10 C.F.R. § 2.326(a)(1), a motion to reopen "must be timely." Under 10 C.F.R. § 2.326(a)(1), the timeliness of a motion to reopen in which the movant proffers a new contention depends primarily on an assessment as to when the movant first knew, or should have known, enough information to raise the issues presented in the new contention. If the motion to reopen and the proposed new contention are based on material information that was not previously available, then it qualifies as timely.⁴³

CRAFT appears to argue that its contention is timely because it is based on the Staff's FSEIS, which was publically available in September 2016.⁴⁴ In particular, CRAFT claims that the FSEIS "does not adequately address SAMA Analysis as it pertains to potassium iodide [KI] distribution in the Primary [EPZ] and Secondary EPZ."⁴⁵ While CRAFT's Motion to Reopen states that its challenge is to the FSEIS, CRAFT's Petition to Intervene states that it "is directly challenging the Applicant's SAMA analysis...."⁴⁶ In particular, CRAFT "challenges alleged

⁴² 10 C.F.R. § 2.326(b).

⁴³ *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 545 (2010).

⁴⁴ Motion to Reopen at 1. CRAFT cites to Section III.A of its motion as providing support for why the motion is timely. See Motion to Reopen at 4. However, there is no section III.A of the Motion to Reopen.

⁴⁵ Motion to Reopen at 1. See *also* Petition to Intervene at 6-7.

⁴⁶ Petition to Intervene at 7. See *also id.* ("CRAFT contends that the Applicant's LRA and associated ER analyses have material deficiencies..."); *id.* at 8 ("...CRAFT's genuine material dispute with the Applicant specifically regarding its SAMA analysis serves as the sole basis for this proposed contention.").

incorrect SAMA analysis assumptions and inputs derived from the existing Fermi 2 Emergency Preparedness Plan.”⁴⁷

Notably, DTE’s SAMA analysis has not changed with respect to the issues CRAFT raises since DTE submitted its LRA in 2014.⁴⁸ Likewise, the discussion of the SAMA in the FSEIS is the same as what was in the DSEIS with respect to the issues CRAFT raises. The DSEIS was publically available in October 2015. To the extent that the Motion to Reopen asserts that the FSEIS is inadequate because of its reliance on DTE’s SAMA analysis, CRAFT has not identified any new or materially different information. Thus, CRAFT could have raised its concerns with the SAMA analysis in the ER when it filed its initial petition to intervene in 2014 or raised its concerns with the Staff’s analysis in the DSEIS when the DSEIS was issued in October 2015.

CRAFT also argues that its Motion to Reopen was timely filed because it was filed within 30-days of an October 26, 2016, meeting between Alliance to Halt Fermi 3 staff and Mark Hammond, the Monroe County Emergency Management Division Director.⁴⁹ CRAFT appears to assert that it received new and materially different information than information previously available as a result of this meeting. For example, CRAFT asserts that it was reported at this meeting that “the actual distribution of KI to persons living in the Emergency Evacuation Zone (EPZ) although now reported as 5.2% in 2012 is now estimated to be 10%-15% based on substantiation of redeemed vouchers and telephone surveys.”⁵⁰ Further, CRAFT asserts that it “has discovered that the human population residing within the 10-mile Fermi EPZ is mostly

⁴⁷ Petition to Intervene at 7. See also *id.* at 9 (asserting that the “KI distribution program serving the Fermi EPZ residents is a disaster and a scandal...”).

⁴⁸ DTE’s SAMA analysis takes no credit for KI distribution in the Primary EPZ or Secondary EPZ. In other words, DTE’s SAMA Analysis assumes all persons within the modeled zones receive no protection from KI.

⁴⁹ Petition to Intervene at 8.

⁵⁰ *Id.*

unprepared in the event of a severe accident, specifically regarding the existing [KI] distribution program.”⁵¹ CRAFT argues that DTE’s SAMA analysis “errs by significantly underestimating the economic costs and consequences of a severe accident” to the extent that the SAMA analysis “relies on the input assumption that the KI distribution program is largely effective and adequately protective of public health.”⁵²

As an initial matter, CRAFT does not indicate that the information it relies on regarding the distribution of KI and the population in the EPZ was only publicly available as of the meeting on October 26, 2016. In fact, CRAFT cites to publications from 2010, 2012, and 2014 in support of its claims.⁵³ As explained above, the determination of whether information is new is based on when the information becomes available to the public, not when a petitioner becomes aware of the information.⁵⁴ Thus, CRAFT has not demonstrated that its contention is based on new information.

Moreover, CRAFT has not indicated that any of the information on which it relies is materially different from information previously available. CRAFT is primarily concerned with the KI distribution program. CRAFT’s Petition to Intervene assumes that DTE’s SAMA analysis accounted for a KI distribution program, and that the KI inputs DTE used were inappropriate and unrealistic.⁵⁵ In particular, CRAFT argues that the SAMA “factored and accounted for” the KI

⁵¹ Petition to Intervene at 8.

⁵² *Id.*

⁵³ For example, CRAFT cites to the 2010 census when estimating the number of individuals living in residences either fully or partially located within the 10-mile Fermi EPZ. Petition to Intervene at 8. CRAFT also cites to *Disaster Medicine and Public Health Preparedness*. *Id.* at 9. Likewise, the motion relies on an unspecified 2014 FEMA report and a 2012 article. *Id.* See also Laura R. Zwolinski, MPH; Martha Stanbury, MSPH; Susan Manente, MA, “Nuclear Power Plant Emergency Preparedness: Results from an Evaluation of Michigan’s Potassium Iodide Distribution Program,” *Disaster Medicine and Public Health Preparedness*, 2012, 6:263-269.

⁵⁴ *Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2)*, CLI-10-27, 72 NRC 481, 496 (2010).

⁵⁵ See, e.g., Petition to Intervene at 8 (claiming that the SAMA analysis is erroneous and deficient to the extent that DTE incorporated flawed and erroneous assumption about the KI distribution program). See *id.* at 9 (“CRAFT contends there is genuine plausibility that the Applicant’s use of more

distribution program and that “the data input assumes KI coverage is widespread and very effective within the 10-mile Fermi EPZ.”⁵⁶ CRAFT asserts that if “more appropriate and realistic inputs pertaining to KI coverage in the Fermi EPZ” were used in the SAMA, it “may change the cost-benefit conclusions for the SAMA candidates evaluated.”⁵⁷ However, CRAFT’s claims are not materially different information because DTE’s SAMA analysis, which was submitted back in 2014, takes no credit for KI distribution in the Primary EPZ or Secondary EPZ inputs pertaining to KI coverage. In other words, DTE’s SAMA analysis assumes all persons within the modeled zones receive no protection from KI. Thus, CRAFT’s claims that DTE’s SAMA analysis used the wrong percentages for KI distribution as inputs are unfounded and immaterial to DTE’s SAMA analysis.

Likewise, CRAFT’s claim that “fundamental changes are warranted for any SAMA analysis which fails to incorporate inputs and methodologies pertaining to KI coverage”⁵⁸ is not based on new and materially different information from information previously available. CRAFT does not even indicate what supposedly new and materially different information this claim is based on. CRAFT also does not indicate what changes would be warranted to the SAMA analysis in light of any new information nor indicate why the SAMA analysis’ conservative assumption of no KI ingestion is invalid or unreasonable. As noted above, DTE’s SAMA analysis was submitted with the application in April 2014. To the extent CRAFT had concerns

appropriate and realistic inputs pertaining to KI coverage in the Fermi EPZ may change the cost-benefit conclusions for the SAMA candidates evaluated.”). *See id.* (“More evidence abounds below, demonstrating with further specificity that the Applicant’s alleged input assumptions pertaining to KI coverage in the Fermi EPZ are significantly flawed, yielding an unreasonable SAMA analysis.”).

⁵⁶ Petition to Intervene at 10.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.*

that the SAMA analysis did not include inputs for KI ingestion, or about any of the inputs or assumptions related to the SAMA analysis, it could have raised those claims earlier.⁵⁹

Finally, CRAFT claims that its Motion to Reopen should be granted because there is “unprecedentedly new and materially different circumstances for various human population groups residing within the international 10-mile Fermi EPZ.”⁶⁰ CRAFT claims that there are new Canadian regulations in place that create “a remarkable situation of unequal KI protection ... for certain affected U.S. persons compared to their Canadian counterparts.”⁶¹ CRAFT argues that this creates “environmental justice implications that a proper ER SAMA analysis would surely expose in a dramatic and undeniable fashion.”⁶² Even assuming *arguendo* that the Canadian regulations CRAFT relies on are new, CRAFT has not shown that the SAMA analysis would be affected by considering these regulations or why the FSEIS’s discussion of the SAMA does not comply with NEPA. Thus, CRAFT has not identified any materially different information from information previously available.

The Commission does provide for untimely motions to reopen the record when an exceptionally grave issue has been identified.⁶³ The Commission “anticipates that this

⁵⁹ CRAFT’s Petition to Intervene asks DTE to “reveal all codes and methodological models for the sake of transparency and to be able to substantiate the adequacy or the inadequacy of [the] assumptions on which the SAMA analysis relies.” Petition to Intervene at 10. This is something CRAFT could have raised as a contention when the ER was submitted back in April 2014 or that CRAFT could have raised as a comment on the DSEIS, which was publically available in October 2015. Further, DTE submitted information from the MACCS codes in response to an NRC staff request for additional information. This information has been publicly available since May 2015. See Letter from Vito A. Kaminskis, Site Vice President, DTE Energy, to Document Control Desk, NRC (May 8, 2015) (ADAMS Accession No. ML15141A163).

⁶⁰ Petition to Intervene at 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 10 C.F.R. § 2.326(a)(1).

exception will be granted rarely and only in truly extraordinary circumstances.”⁶⁴ The Commission has stated that “an untimely raised environmental issue could be ‘exceptionally grave,’ depending on the circumstances of the case and the facts presented.”⁶⁵ However, CRAFT has not made any arguments or presented any facts in support of the existence of an exceptionally grave issue. Therefore, CRAFT’s Motion to Reopen is untimely and this untimeliness cannot be excused.

C. The Motion to Reopen Should be Dismissed Because It Does Not Identify a Significant Environmental Issue

Even assuming CRAFT had filed its Motion to Reopen in a timely fashion, the motion does not raise a significant environmental issue as required by 10 C.F.R. § 2.326(a)(2).⁶⁶ Therefore, CRAFT’s Motion to Reopen should be denied. For environmental issues, the Commission has found that the standard for showing significance to reopen a closed record is analogous to the standard for supplementing an environmental impact statement.⁶⁷ The Staff must prepare a supplement to a final environmental impact statement if: “(1) [t]here are substantial changes in the proposed action that are relevant to environmental concerns; or (2) [t]here are new and significant circumstances or information relevant to environmental concerns

⁶⁴ Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,536 (May 30, 1986) (Final Rule).

⁶⁵ *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 500-501 (2012).

⁶⁶ CRAFT did not argue, nor does its Motion to Reopen indicate, that there is a significant safety issue pursuant to 10 C.F.R. § 2.326(a)(2). Instead, CRAFT simply asserts, without support, that its contention “alleges a deficiency or error which has enormous independent health and safety significance.” Petition to Intervene at 7.

⁶⁷ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 28-29 (2006).

and bearing on the proposed action or its impacts.”⁶⁸ Any new information must “paint a ‘*seriously* different picture of the environmental landscape.’”⁶⁹

CRAFT asserts that its Motion to Reopen addresses a significant environmental issue because the FSEIS for the Fermi 2 license renewal “is not supported by an adequate SAMA Analysis as it pertains to potassium iodide distribution in the Primary Emergency Planning Zone (EPZ) and Secondary EPZ.”⁷⁰ But CRAFT does not explain how the KI distribution in the Primary EPZ and Secondary EPZ is new and significant information that paints a seriously different picture of the environmental landscape. Therefore, CRAFT’s claims do not constitute a significant environmental issue under 10 C.F.R. § 2.326(a)(2) and its Motion to Reopen should be denied.

D. The Motion to Reopen Does Not Show That a Materially Different Result Would Be or Would Have Been Likely

CRAFT’s Motion to Reopen should also be denied because it does not demonstrate that a materially different result would be or would have been likely. Under 10 C.F.R. § 2.326(a)(3), a motion to reopen “must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.” The Commission has made clear that the evidence provided in support of a motion to reopen must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding.⁷¹

The unsupported statements in CRAFT’s Motion to Reopen and Petition to Intervene do not suggest, much less demonstrate, that a materially different result would be or would have been likely. Under this standard, CRAFT “must show that it is *likely* that the result would have

⁶⁸ 10 C.F.R. § 51.92(a).

⁶⁹ *PFS*, CLI-06-3, 63 NRC at 28 (quoting *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original)).

⁷⁰ Motion to Reopen at 3.

⁷¹ *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 498 (2012).

been materially different, i.e., that it is more probable than not that [the movant] would have prevailed on the merits of the proposed new contention.”⁷² In its Motion to Reopen, CRAFT claims that the purpose of its contention is to make Fermi comply with NEPA, and that the NRC will withdraw the FSEIS for Fermi ... as a basis for relicensing⁷³ However, CRAFT’s contention regarding KI distribution does not indicate that the FSEIS is inadequate⁷⁴ under NEPA such that it could not support relicensing of Fermi 2. CRAFT provides no evidence to establish the likelihood that, should it prevail, the Fermi 2 FSEIS will be withdrawn as a basis for licensing. Likewise, CRAFT’s contention does not indicate that DTE’s SAMA analysis is inadequate or that additional cost-beneficial SAMAs would be identified based on CRAFT’s claims. Instead, CRAFT makes unsupported claims that the SAMA should have different inputs. Finally, CRAFT has not shown that it is more probable than not that it would have prevailed on the merits of the proposed new contention, as its proffered contention raises issues outside the scope of the proceeding and unsupported assertions that the SAMA analysis is inadequate. These inadmissible challenges do not suggest that a material different result is likely.

III. The Petition to Intervene Should Be Denied Because It Does Not Proffer an Admissible Contention

Finally, CRAFT’s Petition to Intervene should be denied because it does not proffer an admissible contention. CRAFT’s proposed contention “challenges alleged incorrect SAMA analysis assumptions and inputs derived from the existing Fermi 2 Emergency Preparedness Plan.”⁷⁵ CRAFT’s Petition asserts that “[t]o the extent that the Applicant’s SAMA analysis relies on the input assumption that the KI distribution program is largely effective and adequately

⁷² *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 549 (2010) (emphasis in original).

⁷³ Motion to Reopen at 3.

⁷⁴ It is the Staff’s duty to comply with NEPA, not the applicant’s, as NEPA applies to agencies of the Federal government.

⁷⁵ Petition to Intervene at 7.

protective of public health, ... the Applicant's SAMA analysis errs by significantly underestimating the economic costs and consequences of a severe accident."⁷⁶

As discussed below, CRAFT's proposed contention is inadmissible because it raises issues outside the limited scope of a license renewal proceeding, fails to raise a genuine material dispute with the SAMA analysis, is unsupported, and is untimely.

A. Certain Bases Proffered in Support of the Contention Raise Issues Beyond the Scope of the License Renewal Proceeding

CRAFT's Petition acknowledges that challenges to emergency preparedness are outside the scope of this proceeding.⁷⁷ The NRC is not required to make a new finding on the adequacy of emergency preparedness plans for the issuance of a renewed power reactor operating license.⁷⁸ A facility's emergency plans are subject to ongoing regulatory oversight and periodic assessment and are outside the scope of license renewal.⁷⁹ However, CRAFT raises challenges to Emergency Planning, KI distribution, and the use of KI.⁸⁰ These challenges are not within the limited scope of a license renewal proceeding. Therefore, these aspects of the contention must be rejected.

B. The Contention Does Not Raise a Genuine Material Dispute With the SAMA Analysis

While CRAFT's contention relates to DTE's SAMA analysis, which is within the scope of this license renewal proceeding, CRAFT's contention is inadmissible because it fails to raise a

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 7.

⁷⁸ 10 C.F.R. § 50.47(a)(1); 56 Fed. Reg. 64,943, 64,966-67 (Dec. 13, 1991).

⁷⁹ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 377 (2015).

⁸⁰ See, e.g., Petition to Intervene at 9 (claiming that the "KI distribution program serving the Fermi EPZ residents is a disaster and a scandal to the extent that agencies knowingly give false public assurances about family and community readiness."). *Id.* at 8 ("CRAFT takes issue with both the NRC and the State of Michigan over the development and implementation of the KI distribution program intended to cover the area surrounding the Fermi 2 plant...").

genuine material dispute with DTE's SAMA analysis or the FSEIS' SAMA discussion. As discussed above, CRAFT's contention takes issue with the inputs used in DTE's SAMA analysis. However, it is not enough to claim that inputs in a SAMA analysis should be different. Instead, the Commission has explained that

A contention proposing alternative inputs or methodologies must present some factual or expert basis for why the proposed changes in the analysis are warranted (e.g., why the inputs or methodology used is unreasonable, and the proposed changes or methodology would be more appropriate). Otherwise, there is no genuine material dispute with the SAMA analysis that was done, only a proposal for an alternative NEPA analysis that may be no more accurate or meaningful.⁸¹

CRAFT has not provided any factual or expert basis for why the inputs or methodology used by DTE (and discussed by the Staff in the FSEIS) are unreasonable, or why different KI distribution inputs would be more appropriate. Instead, CRAFT merely claims that the FSEIS and the SAMA analysis are unreasonable and do not comply with NEPA. This does not raise a genuine material dispute with either the SAMA analysis or the FSEIS.⁸² Therefore, the contention should be denied.

C. The Contention Lacks an Adequate Basis

CRAFT's contention is also inadmissible because it lacks adequate support. In addressing a proffered SAMA contention in the closed *Pilgrim* proceeding, the Commission explained that

At the threshold contention admission stage, the burden for providing support for a contention is on the petitioner. And the *added* "burden of satisfying the reopening requirements" is, deliberately, "a heavy one." "Bare assertions and speculation," even by an expert, are insufficient to trigger a full adjudicatory proceeding. While we do not expect petitioners to prove their case

⁸¹ *Seabrook*, CLI-12-5, 75 NRC 301, 323–24.

⁸² *See id.* at 323 ("We have long held that contentions admitted for litigation must point to a deficiency in the application, and not merely 'suggestions' of other ways an analysis could have been done, or other details that could have been included. SAMA adjudications would prove endless if hearings were triggered merely by suggested alternative inputs and methodologies that conceivably could alter the cost-benefit conclusions.") (internal citations omitted).

at the contention admissibility stage, it is not enough for a contention merely to speculate that some input, some pathway, or some scenario left unconsidered may significantly alter the number and kinds of mitigation alternatives found cost-beneficial.⁸³

Here, CRAFT has no factual basis in its contention to suggest that the existing SAMA analysis results were not sufficient for NEPA purposes.⁸⁴ Likewise, CRAFT offers no factual basis to suggest that the FSEIS is not sufficient for NEPA purposes. Therefore, CRAFT's contention lacks an adequate basis and should be denied.

D. The Contention Is Untimely

CRAFT's contention should also be dismissed because it is untimely. As discussed above in Section II.B., because this contention was filed after the initial deadline for filing, it must meet the requirements in 10 C.F.R. § 2.309(c) (i.e., it must be based on new and materially different information from information previously available). CRAFT has not demonstrated that its contention is based on any new information or any materially different information than information previously available. Therefore, CRAFT's contention should be denied.

CONCLUSION

CRAFT's Motion to Reopen and Petition to Intervene should be denied. CRAFT's Motion to Reopen should be denied because it is not supported by an affidavit, is untimely and does not address an extremely grave issue, it does not address a significant environmental issue, and does not demonstrate that a materially different result would be likely.

⁸³ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012).

⁸⁴ And as discussed above, CRAFT did not satisfy the reopening rule criteria, which include demonstrating the likelihood of a materially different result in the SAMA analysis if the newly proffered evidence were considered. See 10 C.F.R. § 2.326(a)(3); See also *Pilgrim*, CLI-12-15, 75 NRC 704, 714.

CRAFT's Petition to Intervene should be denied because it raises issues outside the scope of this license renewal proceeding, fails to raise a genuine material dispute with the SAMA, is unsupported, and is untimely.

Respectfully submitted,

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14 A44
Washington, DC 20555
Telephone: (301) 287-9203
E-mail: Catherine.Kanatas@nrc.gov

Dated at Rockville, Maryland
this 1st day of December, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO CRAFT'S MOTION TO REOPEN THE RECORD AND PETITION TO INTERVENE," dated December 1, 2016 have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 1st day of December, 2016.

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-14 A44
Washington, DC 20555
Telephone: (301) 287-9203
E-mail: Catherine.Kanatas@nrc.gov

Dated at Rockville, Maryland
this 1st day of December, 2016