



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

April 29, 2020

EA-19-138

Mr. Peter Dietrich, Senior VP
and Chief Nuclear Officer
DTE Energy
Fermi 2 – 260 TAC
6400 North Dixie Highway
Newport, MI 48166

SUBJECT: FERMI NUCLEAR POWER PLANT, UNIT 2 – SECURITY BASELINE
INSPECTION REPORT 05000341/2020403; NRC INVESTIGATION
REPORT NO. 3-2019-004 AND APPARENT VIOLATIONS

Dear Mr. Dietrich:

This letter refers to the inspection and investigation completed on November 18, 2019, by the U.S. Nuclear Regulatory Commission (NRC) at your Fermi Nuclear Power Plant, Unit 2 facility (Fermi 2) located in Newport, Michigan. The purpose of the inspection and investigation, in part, was to determine if a licensee manager deliberately assigned tasks to an individual who was not qualified or authorized to perform those tasks. Enclosure 1 to this letter presents the results of this inspection. A Factual Summary of the Office of Investigations report is provided as Enclosure 2. A final exit briefing was conducted (telephonically) with you and other members of your staff on April 29, 2020.

This inspection and investigation examined activities conducted under your license as they relate to safety and compliance with the Commission's rules and regulations and with the conditions in your license. Within these areas, the inspection consisted of an examination of selected procedures and representative records, observations of activities, and interviews with personnel.

Based on the results of this inspection and investigation, apparent violations (AVs) were identified and are being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The NRC has also evaluated these issues under the risk significance determination process as having very low security significance (green). As stated in the NRC's Enforcement Policy, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The current Enforcement Policy is included on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The AVs being considered for escalated enforcement action are summarized in Enclosure 1.

Enclosure(s) transmitted herewith contain(s) SUNSI. When separated from enclosure(s), this transmittal document is decontrolled.
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The NRC first learned of the circumstances associated with the AVs being considered for escalated enforcement action when, on January 16 and 25, 2019, your staff at Fermi 2 communicated to the NRC that they had identified a licensee manager at Fermi 2 who had deliberately assigned his administrative assistant the task of recording monthly verifications required by NRC regulations when this individual was not authorized or qualified to perform those verifications. These circumstances occurred from July 26, 2018, until their identification by your staff on January 16, 2019. The NRC has concluded that the actions of the manager were deliberate and caused the licensee to violate requirements contained in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 26, 73, and 50, as discussed in Enclosure 2.

The circumstances surrounding these apparent violations, the significance of the issues, and the need for lasting and effective corrective action were discussed with members of your staff at the inspection exit meeting on April 29, 2020.

In addition, since you identified the violation, and based on our understanding of your corrective action, a civil penalty may not be warranted in accordance with Section 2.3.4 of the Enforcement Policy. The NRC's final decision will be based on you confirming on the license docket that the corrective actions previously described to the NRC staff have been or are being taken.

Before the NRC makes its enforcement decision, we are providing you an opportunity to: (1) respond in writing to the apparent violations addressed in this inspection report within 30 days of the date of this letter; (2) request a Pre-decisional Enforcement Conference (PEC); or (3) request Alternative Dispute Resolution (ADR) mediation. If a PEC is held, the NRC will issue a press release to announce the time and date of the conference; however, the PEC will be closed to public observation since Security-Related Information and information related to an Office of Investigations report will be discussed and the report has not been made public. Please contact Mr. Steven Orth at 630-829-9757 within 10 days of the date of this letter to notify the NRC of your intended response. A PEC should be held within 30 days and an ADR session within 45 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violations in NRC Inspection Report 05000341/2020403; EA-19-138" and should include for each apparent violation: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Additionally, your response should be sent to the NRC's Document Control Center, with a copy mailed to David Curtis, Acting Director, Division of Reactor Safety, Region III, 2443 Warrenville Rd., Suite 210, Lisle, IL 60532, within 30 days of the date of this letter. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

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If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on these matters and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned.

In lieu of a PEC, you may also request ADR with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a third party neutral. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the “mediator”) works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

The enclosures to this letter contain Security-Related Information in accordance with 10 CFR 2.390(d)(1) and its disclosure to unauthorized individuals could present a security vulnerability. Therefore, the material in the enclosures will not be made available electronically for public inspection in the NRC Public Documents Room or from the NRC's Agencywide Documents Access Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. If you choose to provide a response that contains Security-Related Information, please mark your entire response “Security-Related Information—Withhold from public disclosure under 10 CFR 2.390” in accordance with 10 CFR 2.390(d)(1) and follow the instructions for withholding in 10 CFR 2.390(b)(1). The NRC is waiving the affidavit requirements for your response in accordance with 10 CFR 2.390(b)(1)(ii).

P. Dietrich

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If you have any questions concerning this matter, please contact Steven Orth of my staff at 630-829-9757.

Sincerely,

David
Curtis

Digitally signed by
David Curtis
Date: 2020.04.29
09:51:47 -05'00'

David Curtis, Acting Director
Division of Reactor Safety

Docket No. 05000341
License No. NPF-43

Enclosures:
As stated

cc: G. Anderson, Security Manager
D. Asselin, State Liaison Officer,
State of Michigan

cc w/o encl: Distribution via LISTSERV®

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Letter to Peter Dietrich from David Curtis dated April 29, 2020.

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INSPECTION REPORT 05000341/2020403; NRC INVESTIGATION
REPORT NO. 3-2019-004 AND APPARENT VIOLATION

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