UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Allison M. Macfarlane, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran
Stephen G. Burns

In the Matter of	)	
DTE ELECTRIC COMPANY	)	Docket No. 52-033-COL
(Fermi Nuclear Power Plant, Unit 3)	)	

CLI-14-10

MEMORANDUM AND ORDER

Intervenors[1] challenge the Atomic Safety and Licensing Board's ruling on the merits of Contention 15A/B in favor of the applicant, DTE Electric Company.[2] For the reasons set forth below, we deny the petition for review.

I. BACKGROUND

This proceeding concerns DTE's combined license application to construct and operate a GE-Hitachi Economic Simplified Boiling Water Reactor (ESBWR) on the Fermi site in Monroe

[1] Intervenors are Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman.

[2] *Intervenors' Petition for Review of LBP-14-07 (Ruling for Applicant on Quality Assurance)* (June 17, 2014) (Petition). *See generally* LBP-14-7, 79 NRC __ (May 23, 2014) (slip op.).

County, Michigan.[3] In November 2009, after they were admitted as parties to the proceeding, Intervenors filed Contention 15, a new contention regarding DTE's quality assurance program.[4] In June 2010, the Board admitted and reformulated the contention into two subparts, A and B.[5]

In support of their contention, Intervenors relied on an NRC Staff notice of violation that was issued to DTE in October 2009 for failure to comply with the quality-assurance requirements in 10 C.F.R. Part 50, Appendix B from March 2007 to February 2008 while Black and Veatch, a contractor for DTE, performed site-investigation activities for the development of DTE's combined license application.[6] As reformulated by the Board, the introductory language

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[3] *See* Detroit Edison Company; Notice of Hearing, and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for Fermi 3, 74 Fed. Reg. 836 (Jan. 8, 2009). Intervenors petitioned for leave to intervene, proposing fourteen contentions. The Board admitted four: Contentions 3, 5, 6, and 8. LBP-09-16, 70 NRC 227, 306 (2009). In three separate opinions, the Board granted summary disposition of Contentions 3, 5, and 6 in favor of DTE. *See* Order (Granting Motion for Summary Disposition of Contention 3) (July 9, 2010) (unpublished); Order (Granting Motion for Summary Disposition of Contention 5) (Mar. 1, 2011) (unpublished); LBP-12-23, 76 NRC 445, 452 (2012) (among other things, granting summary disposition of Contention 6). In the decision challenged here, the Board found in favor of the Staff on the merits of Contention 8. LBP-14-7, 79 NRC at __ (slip op. at 2); *see infra*. We will address in a separate decision the Board's request for *sua sponte* review of issues related to Intervenors' proposed Contention 23. *See* LBP-14-9, 80 NRC __ (July 7, 2014) (slip op.).

[4] *Supplemental Petition of Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, Sierra Club, Keith Gunter, Edward McArdle, Henry Newman, Derek Coronado, Sandra Bihn, Harold L. Stokes, Michael J. Keegan, Richard Coronado, George Steinman, Marilyn R. Timmer, Leonard Mandeville, Frank Mantei, Marcee Meyers, and Shirley Steinman for Admission of a Newly-Discovered Contention, and for Partial Suspension of COLA Adjudication* (Nov. 6, 2009) (Proposed Contention 15).

[5] LBP-10-9, 71 NRC 493, 499 (2010).

[6] *See* Proposed Contention 15, at 1-5.

of Contention 15 referenced the Staff's findings in the October 2009 notice of violation.[7] In Subpart A of the contention, Intervenors argued that the NRC may not issue a combined license for Fermi Unit 3 until DTE either corrects the information obtained from Black and Veatch's site-investigation activities or demonstrates that its quality was not affected by the violation.[8] And in Subpart B of the contention, Intervenors challenged DTE's general commitment to comply with NRC quality-assurance regulations. Intervenors asserted that the NRC cannot issue a license until DTE demonstrates that it has adopted and implemented a sufficient quality assurance program.[9]

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[7] LBP-10-9, 71 NRC at 510 ("Detroit Edison (DTE) failed to comply with Appendix B to 10 C.F.R. Part 50 to establish and implement its own quality assurance (QA) program when it entered into a contract with Black and Veatch (B&V) for the conduct of safety-related combined license (COL) application activities and to retain overall control of safety-related activities performed by B&V. This violation began in March 2007 and continued through at least February 2008. Further, DTE failed to complete internal audits of QA programmatic areas implemented for the Fermi 3 COL Application, and DTE also has failed to document trending of corrective actions to identify recurring conditions adverse to quality since the beginning of the Fermi Unit 3 project in March 2007."). The Staff issued a revised notice of violation in April 2010 after a response from DTE. *See id.* at 500-01. The admitted contention, however, focused on the October 2009 notice of violation.

[8] *Id.* at 510-11 ("These deficiencies adversely impact the quality of the safety[-] related design information in the FSAR [(Final Safety Analysis Report)] that is based on B&V's tests, investigations, or other safety-related activities. Because the NRC may base its licensing decision on safety-related design information in the FSAR only if it has reasonable assurance of the quality of that information, it may not lawfully issue the COL until the deficiencies have been adequately corrected by the Applicant, or until the Applicant demonstrates that the deficiencies do not affect the quality of safety-related design information in the FSAR.").

[9] *Id.* at 511 ("Although DTE claims that in February 2008 it adopted a QA program that conforms to Appendix B, DTE has failed to implement that program in the manner required to properly oversee the safety-related design activities of B&V. This demonstrates an ongoing lack of commitment on the part of DTE's management to compliance with NRC QA regulations. The NRC cannot support a finding of reasonable assurance that the plant, as built, can and will be operated without endangering the public health and safety until DTE provides satisfactory proof of a fully-implemented QA program that will govern the design, construction, and operation of Fermi Unit 3 in conformity with all relevant NRC regulations.").

DTE later moved for summary disposition of Contention 15A/B, which the Staff supported.[10] The Board denied DTE's motion, however, and found that genuine issues of material fact remained in dispute between the parties.[11] Thus, Contention 15A/B proceeded to an evidentiary hearing along with Intervenors' Contention 8, which challenged the adequacy of the Staff's final environmental impact statement with regard to the effects of construction and operation of Fermi Unit 3 on the eastern fox snake, a state-listed threatened species, as well as the adequacy of the mitigation measures planned for its protection.[12] The Board held the evidentiary hearing on October 30 and 31, 2013.[13] After weighing the parties' testimony and exhibits, the Board ruled on the merits of both contentions and found in favor of the Staff on Contention 8 and DTE on Contention 15A/B.[14]

Intervenors' petition for review followed. Intervenors challenge only the Board's ruling on the quality-assurance issues in Contention 15A/B; they do not seek review of the Board's ruling on Contention 8.[15] DTE and the Staff oppose the petition for review.[16]

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[10] *Applicant's Motion for Summary Disposition of Contention 15* (Apr. 17, 2012); *NRC Staff Answer to Applicant's Motion for Summary Disposition of Contention 15* (May 7, 2012). Intervenors opposed summary disposition. *See Intervenors' Response in Opposition to Applicant's Motion for Summary Disposition of Contention 15* (May 17, 2012).

[11] LBP-12-23, 76 NRC at 480.

[12] *See generally* LBP-09-6, 70 NRC at 285-92 (admitting Contention 8); LBP-11-14, 73 NRC 591, 604 (2011) (denying DTE's first motion for summary disposition of Contention 8); LBP-12-23, 76 NRC at 465 (denying DTE's second motion for summary disposition of Contention 8).

[13] Tr. at 271-712.

[14] LBP-14-7, 79 NRC at __ (slip op. at 2).

[15] Petition at 1.

[16] *Applicant's Answer Opposing Petition for Review of LBP-14-07* (July 14, 2014) (DTE Opposition); *NRC Staff's Answer to Intervenors' Petition for Review of LBP-14-07* (July 14, (continued . . .)

II. DISCUSSION

We will grant a petition for review at our discretion, upon a showing that the petitioner has raised a substantial question as to whether

(i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(iii) a substantial and important question of law, policy, or discretion has been raised;

(iv) the conduct of the proceeding involved a prejudicial procedural error; or

(v) any other consideration that we may deem to be in the public interest.[17]

Intervenors argue that review is warranted here because they have raised a substantial question as to each of these considerations.[18] We disagree. Intervenors have not presented a substantial question that would justify review of the Board's ruling on Contention 15A/B.

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2014) (Staff Opposition). On July 25, 2014, Intervenors e-mailed a request for an extension of time to file a reply until July 28, 2014, because Intervenors' counsel experienced problems with his computer hard drive. *Intervenors' Motion for Enlargement of Time to Reply in Support of Petition for Review* (July 30, 2014), at 1-2 & n.1. Intervenors e-mailed their replies on July 28, 2014, and on July 30, 2014, they filed the replies and the motion for extension of time on the electronic hearing docket. *Intervenors' Reply to NRC Staff Answer to Petition for Review of LBP-14-07 (Ruling for Applicant on Quality Assurance)* (July 30, 2014), at i n.1; *Intervenors' Reply to DTE Answer Opposing Petition for Review of LBP-14-07 (Ruling for Applicant on Quality Assurance)* (July 30, 2014), at i n.1. Because Intervenors' extension request is unopposed and because Intervenors have shown good cause for the modest extension, we grant the motion. *See* 10 C.F.R. § 2.307(a). In addition, we grant Intervenors an enlargement of the page-limit for their petition for review. *See* DTE Opposition at 2; 10 C.F.R. § 2.341(b)(2) (Intervenors' petition exceeded the limit by three pages). *But see infra* note 41.

[17] 10 C.F.R. § 2.341(b)(4)(i)-(v).

[18] *See* Petition at 2. Although Intervenors cite only the considerations in section 2.341(b)(4)(ii) through (v), they also invoke subsection (i) as a basis for review, arguing that the Board "ignored the greater weight of the evidence" with respect to the adequacy of DTE's quality assurance oversight of the safety-related pre-application services performed by its contractor, Black and Veatch. *See id.* at 2-3.

Intervenors argue that the Board erred in finding that DTE demonstrated by a preponderance of the evidence that it appropriately remained responsible for quality assurance over Black and Veatch, DTE's contractor for pre-application, site-investigation activities.[19] But for many of Intervenors' attempts in their petition for review to point to information in the record that supports their view—i.e., that safety-related information in DTE's application is "unreliable" or that DTE lacks a "commitment" to comply with the NRC's quality-assurance requirements—DTE and the Staff point to information in the record that demonstrates that Intervenors may have misinterpreted the evidence or failed to demonstrate its relevance to the issues in dispute.[20]

For example, Intervenors challenge the reliability of Black and Veatch's subsurface site investigations for DTE during the pre-application period, claiming that those investigations were the "root cause of . . . site characterization issues that continue to plague the Fermi 3 Licensing Project."[21] But DTE witnesses explained at the hearing that recent seismic and geotechnical work on the proposed Fermi 3 site is related to ESBWR design changes and lessons-learned activities from the March 11, 2011, Fukushima accident in Japan.[22] And Intervenors cite a DTE presentation to an industry working group in response to the October 2009 notice of violation as evidence that DTE's quality assurance program was poorly managed.[23] But DTE witnesses

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[19] *See id.* at 2-3.

[20] *Compare id.* at 12-23, *with* Staff Opposition at 13-17, *and* DTE Opposition at 8-13.

[21] Petition at 13 (internal quotation marks omitted).

[22] *See* Staff Opposition at 16 (citing Tr. at 541-42).

[23] Petition at 15 (citing Ex. INTS 068, *Testimony of Arnold Gundersen Supporting [] Intervenors Contention 15: DTE COLA Lacks Statutorily Required Cohesive QA Program* (Apr. 30, 2013), at (continued . . .)

referenced the presentation as evidence of its "willingness to discuss lessons-learned with the industry as well as its continual improvement efforts."[24]

We give substantial deference to licensing board findings of fact, and we will not overturn a board's factual findings unless they are "not even plausible in light of the record viewed in its entirety."[25] The Board made extensive factual findings to support its conclusion that DTE satisfied the requirements of 10 C.F.R. Part 50, Appendix B, all of which were supported by the evidence presented by DTE and the Staff. Specifically, the Board noted that DTE used a vendor with an Appendix B quality assurance program, required by contract that Black and Veatch's work conform with that program, reviewed a prior audit of that program, employed an owner's engineer to oversee Black and Veatch's quality assurance efforts, and ultimately did not accept work from Black and Veatch until DTE established its own quality assurance program.[26] Moreover, the Board may reject evidence that it finds unpersuasive or not credible. Therefore, we see nothing that would suggest that the Board's findings were implausible or not supported by the record.

Intervenors also argue that the Board committed prejudicial procedural error by excluding from the record a number of Intervenors' late-filed exhibits.[27] Intervenors assert that

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35 (Gundersen Testimony)). The testimony of Intervenors' witness on this point referenced an excluded exhibit. *See id.* at 4-5 (citing Ex. INTS 068, Gundersen Testimony at 35); *see also* text accompanying notes 27-43.

[24] DTE Opposition at 12.

[25] *David Geisen*, CLI-10-23, 72 NRC 210, 224-25 (2010) (internal quotation marks omitted); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 26 (2003).

[26] LBP-14-7, 79 NRC at __ (slip op. at 38-39).

[27] Petition at 2.

the Board should have overlooked their late filing because Intervenors' expert relied on the exhibits in his pre-filed testimony.[28] They claim that this error was prejudicial because the exhibits, which included internal DTE e-mails and presentations, demonstrated that DTE lacked a sufficient quality assurance program during the development of its application.[29]

But the Board provided Intervenors multiple opportunities to file these exhibits in a timely manner.[30] Intervenors requested two extensions of the original filing deadline, which the Board granted.[31] And after the Board made it clear that no further extensions would be granted, Intervenors nevertheless failed to meet the Board's final exhibit-filing deadline.[32] The Board also provided Intervenors an opportunity to seek reconsideration of its decision to exclude the

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[28] *Id.* at 2, 6.

[29] *See id.* at 3-6.

[30] *See* Order (Adopting Transcript Corrections, Denying Intervenors' Post-Hearing Motion for Admission for Excluded Exhibits, and Closing the Record) (Feb. 4, 2014), at 2-5 (unpublished) (Post-Hearing Board Order).

[31] *See* Order (Granting Intervenors' Motions for Extension of Time, Requesting List of Objections from the NRC Staff, and Explaining Board Procedure in the Event of a Continued Government Shutdown) (Oct. 3, 2013), at 2 (unpublished) (October 3 Board Order); *see generally Intervenors' Motion for Extension of Time for Submission of Exhibits and Prefiled Testimony with Exhibit References* (Sept. 26, 2013); *Intervenors' Second Motion for Extension of Time for Submission of Exhibits and Prefiled Testimony with Exhibit References* (Oct. 1, 2013). Intervenors originally filed all of their exhibits for Contention 15 as one document. *See* Tr. at 239-41. The Board directed Intervenors to refile them by September 26, 2013, a date that Intervenors' counsel stated could be met "easily." Order (Summarizing Pre-hearing Conference) (Sept. 20, 2013), at 2 (unpublished); Tr. at 241.

[32] October 3 Board Order at 2. Although the Board stated that no further extension would be granted past October 4, 2013, Intervenors continued to file their exhibits through October 7, 2013. *See* Post-Hearing Board Order at 3.

late-filed exhibits "as soon as possible after the close of the hearing."[33] Intervenors filed their motion for reconsideration almost two months later.[34]

Although Intervenors claim to have "vastly inferior litigation resources," they are represented by counsel.[35] But even if Intervenors were appearing *pro se*, we would still expect adherence to board directives.[36] Regardless of a party's resources, "[f]airness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations."[37]

Moreover, we give broad discretion to our licensing boards in the conduct of NRC adjudicatory proceedings, and we generally defer to board case-management decisions.[38]

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[33] Tr. at 649-50; *see also id.* at 709-10.

[34] *Intervenors' Post-Hearing Motion for Reconsideration for Admission of Excluded Intervenor Exhibits on Contention 15* (Dec. 27, 2013). DTE and the Staff objected to the timing of the motion for reconsideration due to its arrival during the parties' preparation of proposed findings of fact and conclusions of law. *Applicant's Response to Intervenors' Motion to Reconsider Exclusion of Untimely Exhibits* (Jan. 6, 2014), at 1-2 & n.5; *NRC Staff Answer Opposing Intervenors' Post-Hearing Motion for Reconsideration of Excluded Exhibits on Contention 15* (Jan. 6, 2014), at 4. Intervenors claimed that they were merely providing the rationale for their timely oral motion at the hearing. *Reply in Support of Intervenors' Post-Hearing Motion for Reconsideration of Admission of Excluded Intervenor Exhibits on Contention 15* (Jan. 13, 2014), at 1. Our rules require motions for reconsideration to be filed within ten days of the action for which reconsideration is requested. 10 C.F.R. § 2.323(e).

[35] Petition at 6.

[36] *See Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC 449, 469 (2010); *accord Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21-22 (1998) (1998 Policy Statement) (noting the obligation of all parties to follow the procedures in 10 C.F.R. Part 2 and board scheduling orders).

[37] *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 454 (1981) (1981 Policy Statement).

[38] *See* 10 C.F.R. § 2.319 ("A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing (continued . . .)

Licensing boards are expected to set procedures to ensure the case is managed efficiently, in a manner that is fair to all of the parties.[39] And a board may take disciplinary action against a party that "fails . . . to comply with any prehearing order," as long as the action is just.[40] The Board's actions in this case are consistent with our expectations for orderly case management.[41]

In any event, the Board "reviewed the parties' filings and the [excluded] exhibits . . . and found that they would not add anything of significance to the record."[42] We are not persuaded by Intervenors' arguments on appeal that the excluded evidence would have done otherwise—i.e., that it would have changed the Board's findings on Contention 15.[43] Given all of these

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process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends . . . ."); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-07-28, 66 NRC 275, 275 (2007); *see also* 10 C.F.R. § 2.321(c).

[39] 10 C.F.R. § 2.319(k) (authorizing boards to "[s]et reasonable schedules for the conduct of the proceeding and take actions reasonably calculated to maintain overall schedules"); *see also 1998 Policy Statement*, CLI-98-12, 48 NRC at 19 ("Current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings."); *1981 Policy Statement*, CLI-81-8, 13 NRC at 453 ("The Commission's Rules of Practice provide the board with substantial authority to regulate hearing procedures.").

[40] 10 C.F.R. § 2.320.

[41] In other proceedings we have imposed or upheld disciplinary measures against parties and their representatives when they failed to comply with board directives and procedural rules. *See, e.g.*, *Indian Point*, CLI-07-28, 66 NRC at 275; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 38-39 (2006); Order of the Secretary (Dec. 19, 2007) (unpublished) (ADAMS accession no. ML073531806) (*Indian Point* license renewal proceeding).

[42] Post-Hearing Board Order at 5.

[43] *See Pilgrim*, CLI-10-14, 71 NRC at 470-71; *see generally* Petition at 4-6. Furthermore, as a practical matter, the Board had an opportunity to consider the exhibits as part of Intervenors' (continued . . .)

considerations, we see no reason to disturb the Board's decision to exclude Intervenors' late-filed exhibits.

Finally, Intervenors argue that review is warranted because the Board's decision constituted a *de facto* exemption or waiver of the NRC's quality-assurance regulations that "deprived the public of notice and an opportunity to adjudicate the basis for [DTE's] unprecedented [quality assurance] program model."[44] Intervenors' argument that the Board granted DTE an exemption from the quality-assurance requirements in 10 C.F.R. Part 50, Appendix B, or applicable quality-assurance guidance, is incorrect.[45] The Board disagreed with Intervenors' interpretation that Appendix B requires an applicant to have its own in-house quality assurance program in order to satisfy the requirement that an applicant "retain responsibility" over the services of a contractor for certain safety-related activities.[46] Rather, the Board found that DTE appropriately delegated to Black and Veatch the establishment and implementation of the quality assurance program for pre-application activities and maintained "direct supervision, oversight, and contractual control of [Black and Veatch] and its [quality assurance] program."[47]

The plain language of Appendix B supports the Board's view and demonstrates that Intervenors fail to raise a substantial question with respect to the purported exemption. Criterion I of Appendix B expressly authorizes an applicant to "delegate to others, such as contractors,

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pre-filed testimony, which quoted or referenced some of the excluded material. *See* Ex. INTS 068, Gundersen Testimony at 26-36.

[44] Petition at 3.

[45] Intervenors incorrectly assert that DTE was required to obtain an exemption from NEI 06-14A, which is a non-binding guidance document. *See id.* at 25.

[46] LBP-14-7, 79 NRC at __ (slip op. at 29).

[47] *Id.* at __ (slip op. at 39).

agents, or consultants, the work of establishing and executing the quality assurance program, or any part thereof, but shall retain responsibility for the . . . program."[48] The analysis of whether an applicant has "retained responsibility" is a factual issue, and, as discussed above, Intervenors have not shown that the Board's resolution of this issue in favor of DTE was "clearly erroneous."[49]

Moreover, the NRC provided members of the public an opportunity to request a hearing on all safety and environmental issues within the scope of DTE's combined license application, including quality assurance. Indeed, the Board admitted this very challenge to DTE's quality assurance program, and provided Intervenors with a full and fair opportunity to question its sufficiency.[50] We therefore reject Intervenors' claim that the Board "deprived the public of notice and . . . opportunity to adjudicate"[51] this issue.

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[48] 10 C.F.R. pt. 50, app. B (I. Organization).

[49] *Id.* § 2.341(b)(4)(i); *see also supra* note 25 and accompanying text.

[50] In addition, the evidentiary hearing was open to the public. *See* Tr. at 271-712. The Board also held a limited appearance session for members of the public to comment on DTE's combined license application. *See* Tr. at 1-79 (Oct. 29, 2013); *see generally* 10 C.F.R. § 2.315(a).

[51] Petition at 3.

III. CONCLUSION

Intervenors have failed to raise a substantial question warranting review of the Board's ruling on Contention 15A/B. We therefore *deny* the petition for review.

IT IS SO ORDERED.[52]

For the Commission

NRC SEAL

/RA/

Rochelle C. Bavol
Acting Secretary of the Commission

Dated at Rockville, Maryland,
this 16th day of December, 2014.

[52] During the pendency of this appeal, Intervenors moved to recuse then-Commissioner William D. Magwood, IV from participating in this decision. *Intervenors' Motion for Recusal of Commissioner Magwood from Participating in Deliberations on Petition for Review of LBP-14-07* (June 25, 2014). Commissioner Magwood denied the motion on July 14, 2014. Decision on the Motion of Beyond Nuclear for Recusal from Participation in Deliberations on Petition for Review of LBP-14-07 (July 14, 2014). Commissioner Magwood has since left the agency and did not participate in this decision.