

NEWS FROM BEYOND NUCLEAR

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Beyond Nuclear Appeals to U.S. Supreme Court in Opposition to Fermi 3 Proposed New Atomic Reactor

Environmental Coalition's Decade-Long Resistance Challenges NRC Rule that Undermines National Environmental Policy Act to Aid New Reactor Construction

Washington, D.C. and Monroe County, MI—Beyond Nuclear, represented by Toledo, Ohio attorney Terry Lodge, has appealed to the U.S. Supreme Court regarding the U.S. Nuclear Regulatory Commission's (NRC) violation of the National Environmental Policy Act (NEPA) at the proposed new Fermi Nuclear Power Plant Unit 3 atomic reactor in Frenchtown Township, Michigan. For over six years, the environmental coalition opposing Fermi 3 has protested NRC's exclusion of the 29-mile-long, 300-foot-wide transmission line corridor from its NEPA-required Environmental Impact Statement (EIS). 10.8 miles of that transmission corridor would pass through previously undisturbed ecosystems, including forested wetlands, very likely critical habitat for numerous endangered and threatened plant and animal species.

Fermi 3 is a General Electric-Hitachi design, the ESBWR (so-called "Economic Simplified Boiling Water Reactor"). The Fermi Nuclear Power Plant is located on the Lake Erie shoreline in Monroe County, MI. Lake Erie is the direct source, or upstream indirect headwaters, of drinking water for many millions downstream, in multiple states and provinces (Michigan, Ohio, Pennsylvania, New York, Ontario, and Quebec), as well as a large number of Native American First Nations on both sides of the U.S.-Canadian border.

On Monday, Lodge submitted a *Petition for a Writ of Certiorari* to the U.S. Supreme Court. (A [link to the Petition](#), and related documents, is post at the Beyond Nuclear website.) The appeal, of a November 27, 2017 U.S. Court of Appeals for the District of Columbia Circuit ruling, questions: Did the NRC commit segmentation, and violate the longstanding recognition of the pre-eminence of NEPA, when it redefined "construction" in its Atomic Energy Act regulations to exclude environmental impact analysis of a major, integral transmission line corridor through critical habitat for

endangered and threatened species? Lodge further questioned: Did the NRC violate its duty to obey NEPA when it denied admission of public intervenors' contention because of an arbitrarily short deadline and simultaneously rejected its own Atomic Safety and Licensing Board Panel's (ASLBP) *sua sponte* recommended adjudication of the matter?

The ASLBP presiding over the Fermi 3 licensing proceeding from 2009 to 2015 found the environmental coalition's transmission corridor NEPA contention merited it to request permission from the NRC Commissioners to undertake its own review of the matter. Such ASLBP *sua sponte* initiatives have only occurred a small handful of times in decades. The NRC Commission, however, blocked the ASLBP review, just as it rejected the environmental coalition's appeals, leading to this federal lawsuit.

"This is the first time the NRC's 2007 Limited Work Authorization (LWA) rule change has been challenged," said Kevin Kamps of Beyond Nuclear, a national watchdog on the nuclear power industry based in Takoma Park, Maryland. "LWA allowed ground to be broken, and major excavation and construction to begin in a great big hurry, at proposed new reactors at Vogtle in Georgia, and Summer in South Carolina. We are striving to prevent such high-speed bulldozing, in violation of NEPA, at Fermi 3," said Kamps.

The NRC LWA rule change was brought to public light by *Bloomberg* reporter Elliot Blair Smith in a September 25, 2007 article entitled "Nuclear Utilities Redefine One Word to Bulldoze for New Plants." Critics blasted the rule change, undermining NEPA, as Orwellian. ([For a Beyond Nuclear backgrounder, see this link.](#)) To exclude such major nuclear power plant construction projects as transmission line corridors as "preconstruction activities," in an end run around many decades of established environmental protection law, critics slammed as "Nukespeak."

"In one of the worst revolving door scandals in NRC history, NRC Commissioner Jeffrey Merrifield shepherded the LWA rule change into regulations, upending decades of agency policy by redefining the word 'construction' to now exclude such major construction projects as transmission corridors," said Michael Keegan of Don't Waste Michigan. "After this favor to the nuclear industry, Merrifield then immediately went to work for the Shaw Group, which specialized in new reactor construction, taking a senior vice president position with an annual salary topping a million dollars," said Keegan, who has watchdogged the Fermi nuclear power plant for more than three decades.

"This jurisdictional grab is clearly not in the public interest," Keegan added.

"NEPA is one of the top environmental protection laws in our country," said Toledo attorney Terry Lodge. "NRC cannot be allowed to excuse itself from obeying this half-century old, hard won law," said Lodge, who has served as legal counsel for Beyond Nuclear and the environmental coalition since the beginning of this

licensing proceeding in 2008.

“The list of endangered and threatened species likely inhabiting this corridor, that would be damaged or destroyed by the transmission lines and towers, includes the Indiana bat, mussels such as the Snuffbox, Northern Riffleshell, and Purple Lilliput, snakes such as the Eastern Massasauga rattler and Eastern Fox constrictor, and plants such as the Eastern Prairie fringed orchid, to name but some,” said Lodge.

This U.S. Supreme Court appeal caps a decade of resistance to Fermi 3. Detroit Edison (DTE) announced the proposed new reactor in February 2007, as part of the so-called “Nuclear Renaissance.” DTE applied to NRC for a combined construction and operation license in September 2008. The bi-national environmental coalition, comprised of Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Environment Alliance of Southwestern Ontario, Don’t Waste Michigan, and Sierra Club Michigan Chapter, legally intervened in March 2009. The coalition, with Lodge as legal counsel, ultimately submitted some three-dozen technical contentions to the NRC’s ASLB. Oral hearings were held in downtown Monroe, MI at Halloween, 2013. When the NRC approved DTE’s Fermi 3 license in May 2015, the coalition immediately appealed to the federal courts.

This appeal to the U.S. Supreme Court not only culminates this decade of resistance. It carries on a tradition of anti-nuclear resistance at Fermi dating back six decades, to when the United Auto Workers appealed its case against Fermi Unit 1 to the U.S. Supreme Court. Fermi 3 would be built on the very spot where Fermi 1 had a partial core meltdown on October 5, 1966, as documented in John G. Fuller’s book *We Almost Lost Detroit*.

Of some three-dozen new “Nuclear Renaissance” atomic reactors proposed a decade ago, none have been built. Those that did break ground include Summer Units 2 and 3 in South Carolina, and Vogtle Units 3 and 4 in Georgia. The South Carolina new build was cancelled, wasting \$9 billion of ratepayer money, after the bankruptcy of reactor vendor/builder Westinghouse Nuclear last spring. The Georgia new build, also years behind schedule and billions of dollars over budget, is also at increasing risk of going belly up. \$12 billion of federal taxpayer money, in the form of U.S. Department of Energy (DOE) loan guarantees, is at risk, in addition to many billions of dollars of ratepayer money. If Fermi 3 breaks ground, DTE could similarly apply for some \$10 billion remaining in the DOE nuclear loan guarantee fund, as well as major MI ratepayer electric bill “nuclear tax” surcharges, to finance construction.

The estimated price tag for the Fermi 3 reactor starts at \$20 billion. It would inevitably increase from there. A twin ESBWR targeted at North Anna, VA (also Unit 3) was priced at \$19 billion a year or two ago -- the Attorney General of the State of VA revealed that information, which exposed DTE's Fermi 3 price tag, which had been kept secret till then.

Beyond Nuclear aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to safeguard our future. Beyond Nuclear advocates for an energy future that is sustainable, benign and democratic. The Beyond Nuclear team works with diverse partners and allies to provide the public, government officials, and the media with the critical information necessary to move humanity toward a world beyond nuclear. Beyond Nuclear: [6930 Carroll Avenue, Suite 400, Takoma Park, MD 20912](https://www.beyondnuclear.org). Info@beyondnuclear.org. www.beyondnuclear.org.